148 U.S. 663

RECORD, CASE No. 13,706.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No., 131.

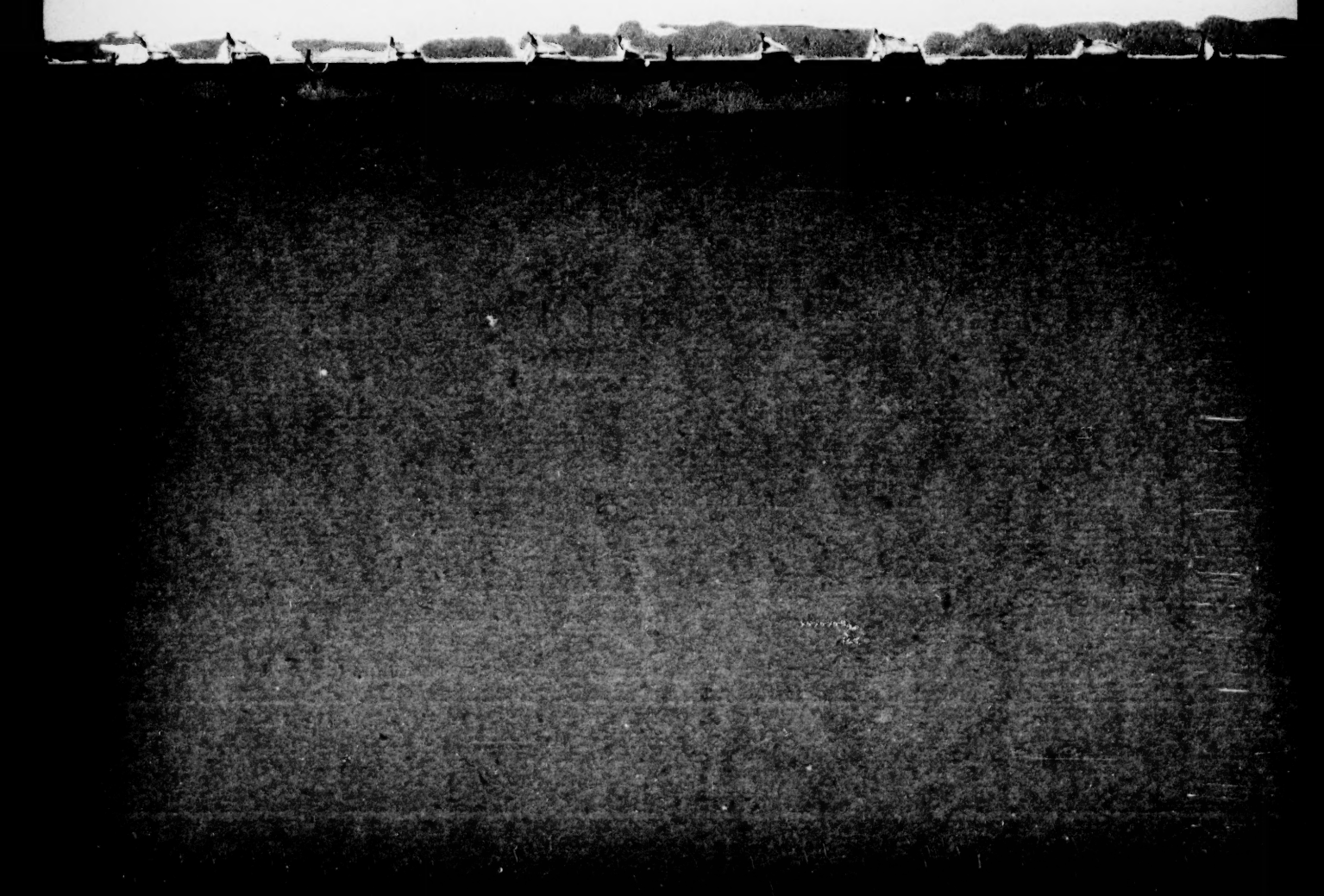
MORRIS T. MARTIN AND CARRIE E. MARTIN,
APPELLANTS,

vs.

HENRY SNYDER, JR., SURVIVING PARTNER OF THE FIRM OF P. W. ENGS & SONS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 7, 1889.



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1 Pleas in the circuit court of the United States of America for the northern district of Illinois, held at the United States court-rooms, in the city of Chicago, in the district aforesaid, before the Hon. Henry W. Blodgett, judge of the district court of the United States for said northern district of Illinois, on Saturday, the twenty-seventh day of July, in the July term of said court, in the year of our Lord one thousand eight hundred and eighty-nine, and of our Independence the one hundred and fourteenth year.

WM. H. BRADLEY, *Clerk.*

HENRY SNYDER, JR., Surviving Partner of the Firm of P. W. Engs & Sons, Composed of Samuel F. Engs, George Engs, and Henry Snyder, Jr., *vs.* MORRIS T. MARTIN and CARRIE E. MARTIN. } In Chancery.

NORTHERN DISTRICT OF ILLINOIS, *ss*:

Be it remembered that on the fifth day of December, 1887, came the defendants, by their solicitors, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, their bond for costs and transcript of record from the circuit court of Lake county, Illinois, in said entitled cause; which said bond and transcript of record
2 are in the words and figures following, to wit:

Bond for Costs.

UNITED STATES OF AMERICA, *Northern District of Illinois*, } *ss*:

Circuit Court, October Term, A. D. 1887.

SAMUEL F. ENG *et al.* *vs.* MORRIS T. MARTIN *et al.* } In Chancery.

We enter ourselves security for costs in this cause and promise to pay all costs which may accrue to the opposite party in this action or to any of the officers of this court; and in default of payment by the defendants of any costs ordered or adjudged to be paid by them we hereby agree and stipulate that execution may issue against our property for any costs taxed against the defendant-.

BISBEE, AHRENS & DECKER,
Per J. W. PADDOCK.

(Endorsed:) Filed Dec. 5, A. D. 1887. Wm. H. Bradley, clerk.

3 Copy.

Security for Costs, Circuit Court of Lake County.

STATE OF ILLINOIS, } ss :
County of Lake, }

Circuit *Circuit* Court of Lake County.

SAMUEL F. ENGS *et al.*
vs.
—— ——.

I do hereby enter myself security for costs in this cause and acknowledge myself bound to pay or cause to be paid all costs which may accrue in this action, either to the opposite party or to any of the officers of this court, in pursuance of the laws of this State.

Dated this 27th day of October, A. D. 1887.

GEORGE F. WESTOVER.

(NOTE.—On back of bond appears following affidavit:)

STATE OF ILLINOIS, } ss :
County of Cook, }

George F. Westover, the within bondsman, being duly
4 sworn, says he is worth more than ten thousand dollars in property in the State of Illinois over and above all liabilities and exemptions.

GEORGE F. WESTOVER.

Subscribed and sworn to before me this 27th day of October, 1887.

[NOTARIAL SEAL.] DUNCAN SHADE GOODING,
Notary Public.

(Endorsed:) Approved and filed this 31st day of Oct., A. D. 1887. Charles Phillips, clerk.

Copy.

STATE OF ILLINOIS, } ss :
Lake County, }

The People of the State of Illinois to the sheriff of said county, Greeting:

We command you that you summon Morris T. Martin and Carrie E Martin, if they shall be found in your county, personally to be and appear before the circuit court of said Lake county on the first day of the next term thereof, to be holden in the court-house, in Waukegan, in said Lake county, on the first Monday of November, 1887, to answer unto Samuel F. Engs, George Engs, and Henry Snyder, Jr., in their certain bill of complaint this — filed in said court on the chancery side thereof.

And have you then and there this writ with an endorsement thereon in what manner you shall have executed the same.

[Seal of Court.] Witness Charles Phillips, clerk of our said court, and the seal thereof, at Waukegan, this 27th day of Oct., A. D. 1887.

CHAS. PHILLIPS, *Clerk.*

STATE OF ILLINOIS, *Lake County,* } ss:

Executed this writ this 27 day of Oct., 1887, by reading it and delivering a true copy of the same to each of the within-named defendants, Morris T. Martin and Carrie E. Martin.

CHASE E. WEBB, *Sheriff.*

Service	$2 00
48 miles necessary travel from court-house to place of residence of within-named defendants and return, 5 cents per mile	2 40
Return	10
Total	4 50

CHASE E. WEBB, *Sheriff.*

Filed in circuit court this 7th day of Nov., A. D. 1887.

CHAS. PHILLIPS, *Clerk.*

WESTOVER & BACKUS, *Sol'rs.*

In the Circuit Court of Lake County, State of Illinois.

STATE OF ILLINOIS, *County of Lake,* } ss:

To the honorable the judge of the circuit court of the State of Illinois, in Lake county, in chancery sitting:

Your orators, Samuel F. Engs, George Engs, and Henry Snyder, Jr., of the city and county of New York, in the State of New York, bring this their bill of complaint against Morris T. Martin and Carrie E. Martin, defendants, and thereupon your orators complain and say that on the 4th day of December, 1882, your orators recovered judgment at law in the superior court of Cook county, in the State of Illinois, against the defendant Morris T. Martin, together with one Henry C. Lawrence, for the sum of nine thousand seven hundred and sixty and $\frac{34}{100}$ dollars and costs of suit, which judgment was so recovered upon an indebtedness contracted by the said Morris T. Martin and the said Henry C. Lawrence on or about the 25th day of April, 1882; that execution upon said judgment against the property of the said Morris T. Martin and Henry C. Lawrence was thereafter duly issued to the sheriff of the said county of Cook, where said Morris T. Martin and said Henry C. Lawrence at the time resided, and the same was thereafter and previous to the filing of this bill of complaint by the said

sheriff returned wholly unsatisfied, he certifying thereon that he could find no property whereon to levy to make any part of the amount thereof, as by the record of said judgment and the execution and return thereon on file in the said superior court of Cook county will more fully appear.

That said judgment remains in full force and unsatisfied, and the amount aforesaid, with interest, is now justly and equitably due thereon over and above all offsets and claims whatsoever.

That this bill is not exhibited in collusion with said defendants or any other person on or for the purpose of protecting said defendants' property from other creditors, but is exhibited for the sole purpose of compelling payment of said judgment against the said Morris T. Martin and Henry C. Lawrence.

That the aforesaid return of the sheriff upon said execution was not procured by the fraud or connivance of your orators, but was made by said sheriff solely for the reason that he was unable to find property of said defendant, Morris T. Martin, or of said Henry
7 C. Lawrence in the said county of Cook out of which, by levy and sale, he could realize any part of the amount of said writ.

Your orators, however, are informed and believe, and charge the fact to be, that said defendants, Morris T. Martin, has real estate or some interest therein and has moneys in hand or deposited or held for his credit or use stocks, bonds, promissory notes, debts due him, mortgages, or other securities, life insurance policies, horses, carriages, or other vehicles and other equipments, watches, diamonds, jewelry, or personal ornaments, silverware, pictures, furniture, fixtures, and other property, equitable interests and things in action belonging to him which he keeps concealed or of which title is held in trust for him and which your orators have been unable to reach by execution.

And that said defendant, Morris T. Martin, has since said 4th day of December, 1882, put out of his hands, name, or possession by some pretended sale, assignment, conveyance, gift, confidence, bailment, or delivery, or by some other secret or cunning device or contrivance divers other such real and personal property with intent to deceive, hinder, delay, and defraud your orators of their said judgment and other creditors of their just demands, all of which property is held in secret trust by the person or persons to whom the same has been so transferred and with the private underst-nding or agreement that the same or some interest therein belongs of right and shall inure to the benefit of said defendant, and that all the property held by said defendant or conveyed, transferred, or disposed of, as aforesaid, the nature, whereabouts, and condition of which is unknown to your orators, ought in equity and good conscience to be applied to the satisfaction of said judgment, but
8 the said defendant neglects and refuses to so apply the same, and that so it would appear if the said defendant would set forth and discover fully and particularly all the facts, circumstances, agreements, confidences, and private trusts and understandings in

regard to the same, which your orators pray the court to compel said defendant to do.

Your orators further charge that after the recovery of the said judgment as aforesaid in favor of your orators and against the said Morris T. Martin and Henry C. Lawrence the said Morris T. Martin purchased certain pieces or parcels of real estate situated in the county of Lake and State of Illinois, and caused the title thereof to be conveyed to and vested in the defendant Carrie E. Martin; and your orators charge that the funds used in the purchase of said real estate were the funds of the said Morris T. Martin and not the separate and undivided property of the said Carrie E. Martin; and your orators charge that the said transaction by which the said Morris T. Martin purchased the said real estate and caused the title thereof to be conveyed to and vested in the said Carrie E. Martin was as to your orators and the creditors of the said Morris T. Martin fraudulent and void; that the said Carrie E. Martin never paid from her own individual property, money, or possessions any consideration for the said real estate, but that the consideration thereof was wholly paid by the said Morris T. Martin with his own funds; that the said Carrie E. Martin knowingly and fraudulently holds the title of the said real estate in secret trust for the said Morris T. Martin and in fraud of the rights of your orators and the
9 creditors of the said Morris T. Martin.

And your orators aver that the said title of the said real estate was thus fraudulently placed by the said Morris T. Martin in Carrie E. Martin and was fraudulently received by said Carrie E. Martin as aforesaid for the purpose of hindering and delaying your orators in the collection of the said judgment.

And your orators aver that the several pieces and parcels of real estate, the title of which was as aforesaid fraudulently conveyed to the said Carrie E. Martin, and which are held in trust by the said Carrie E. Martin for the said Morris T. Martin and which in equity ought to apply to the payment of your orator's said judgment, are described as follows, to wit:

The south half of the southeast quarter of section number twenty-eight (28) and the northwest quarter of the northeast quarter of section number thirty-three (33) and that part of section number thirty-three (33) aforesaid which is described as follows: Beginning at the northeast corner of said section number thirty-three (33) and running thence south forty-five degrees (45) west twenty-eight (28) chains and thirty (30) links to the southwest corner of the northeast quarter of the northeast quarter of said section number thirty-three (33), thence north twenty (20) chains to the northwest corner of the said northeast quarter of the said northeast quarter of said section number thirth-three (33), and thence east twenty (20) chains to the place of beginning, being the northwest half of said quarter of quarter section, all of said premises and real estate being
10 in township number forty-six (46) north, of range number ten (10) east, of the third principal meridian, containing in all one hundred and forty (140) acres, more or less.

Also the following-described land, to wit: Commencing twenty

(20) rods east of the southwest co-ner of section number thirty-five (35), in township number forty-six (46) north, of range number ten (10) east, of the third principal meridian, and running thence south forty (40) rods, and thence east eight (8) rods, thence north forty (40) rods, and thence west eight (8) rods to the place of beginning, containing two (2) acres, more or less, said land being a part of section two (2), in township forty-five (45) north, of range ten (10) east, of the third principal meridian.

Also the following-described land, to wit, being in township forty-five (45) north, of range ten (10) east, of the third principal meridian, known and described as follows: Commencing sixteen (16) rods east of the southwest corner of section thirty-five (35) aforesaid, and running thence south forty (40) rods, thence east four (4) rods, thence north forty (40) rods, thence west four (4) rods to the place of beginning, containing one (1) acre, and being on the west half of the northwest quarter of said section two (2).

Also the following-described land, to wit: The east two-thirds of the west half of the southwest quarter of section number thirty-five (35), in township forty-six (46) north, of range number ten (10) east, of the third principal meridian.

Also the following-described land, to wit: Commencing twenty-nine (29) rods east of the northwest corner of the northwest
11 quarter of section number two (2), in township number forty-five (45) north, of range number ten (10) east, of the third principal meridian, and running thence south forty (40) rods, thence west five (5) rods, thence south forty (40) rods, thence east forty-five (45) degrees north to a point twenty-four (24) rods south of the northeast corner of the west half of the northwest quarter of said section number two (2), in township and range last mentioned; thence north twenty-four (24) rods to the place of beginning, reserving from the last-mentioned piece or tract of land one-fourth of an acre, deeded by Peter Luther to certain persons for a school-house lot.

Also the east half of the northwest quarter and the northeast quarter of southwest quarter of section number thirty-five (35), in township number forty-six (46) north, of range number ten (10) east, of the third principal meridian, containing one hundred and twenty (120) acres, more or less.

Also part of the southeast quarter of the southwest quarter of section number twenty-six (26), in the township and range aforesaid, described as follows: Commencing at the southeast corner of said quarter section and running thence west thirty-seven (37) rods; thence north to the center of the Waukegan road (so called); thence southeasterly along the centre of said road to the east line of said quarter quarter section; thence south to the place of beginning, containing one and one-half acres, more or less.

That all of the said foregoing-described parcels of land are in the county of Lake and State of Illinois.

12 To the end, therefore, that the said defendants may, if they can, show why your orators should not have the relief hereby prayed, and may, but not under oath thereto, being hereby waived,

according to the best and utmost of their knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to all and singular the matters and things hereinbefore stated and charged as to the said several pieces and parcels of real estate alleged to be held by the said Carrie E. Martin in trust and for the use of said Morris T. Martin; that the defendant Morris T. Martin may fully set forth and discover under oath the nature, situation, amount, and value of his personal property, interests, and effects; that he may state whether at the time of filing this bill he has not some interest in some of the articles of personal property mentioned, set forth, and described with- the foregoing bill of complaint, and, if so, that he give a description of all of the same and state where they are located, defining his title and interest therein, stating also the value and amount thereof and by whom held, and that he state whether at the same time he had not some money on hand or deposited or held for his use or credit, and, if so, what amount of money, with whom deposited, by whom held, and whether at the same time he had not some stocks, bonds, promissory notes, debts due him, mortgages, securities, life insurance policies, horses, carriages, or other vehicles and other equipments, watches, diamonds, jewelry, personal ornaments, silverware, pictures, furniture, fixtures, or other property equitable interests or things in action belonging to him or held
13 in trust for him or in which he has some interest, and, if so, that he may set forth a full and particular account thereof and of each thereof and the nature and value of his interest.

And if said defendant, Morris T. Martin, has since the 4th day of December, 1882, put out of his hands or possession by any sale, assignment, conveyance, gift, confidence, bailment, or delivery, or by any device or contrivance, any other personal property or real estate besides that described in the foregoing bill of complaint, in which property by any agreement, private understanding, trust, or confidence he has or might claim any equity of redemption, right, or interest whatsoever, that he may state and set forth fully what property he has so transferred, bailed, confided, or disposed of, and the value thereof, the date and circumstances of such transactions, to whom the same was transferred, bailed, confided, or disposed of, upon what terms or conditions, and what has become of said property or of the avails thereof.

And that the said defendant, Morris T. Martin, state whether he holds the title to or any interest in any other real estate not described in the foregoing bill of complaint, and, if so, that he particularly specify and describe such real estate and state its value and location.

And that the said defendant, Carrie E. Martin, be decreed to hold the said real estate described in this bill of complaint in trust for the said Morris T. Martin and in trust for your orators, and that the title of said real estate be declared by this court to be in the said Morris T. Martin and subject to the rights and lien of your orators' said judgment for the amount thereof and interest and costs,
14 and that your orators have execution against the said property

for the recovery of the amount due them upon the said judgment, interest, and costs, and the costs of this suit.

And that the defendant Morris T. Martin be decreed to pay and satisfy the amount due on said judgment and the costs of this suit, and to apply for that purpose any other property so discovered; that a receiver be appointed to take possession of the said real estate and of any other property that may be discovered belonging to the said Morris T. Martin, with the usual powers of receivers in chancery causes; that the defendants may be enjoined from transferring or otherwise disposing of their property or effects or of any property or effects held in trust for the said Morris T. Martin.

And that all fraudulent transactions by the said Morris T. Martin or the said Carrie E. Martin made in fraud of your orators may be set aside, and that all personal property held or claimed by the said Carrie E. Martin, in which the said Morris T. Martin has or should have any interest, shall be declared subject to execution in favor of your orators for the payment of the said judgment.

And for such other and further relief as may be agreeable to equity and to good conscience.

May it please the court to grant a writ of summons to your orators in the usual form, commanding the appearance and answer of the said defendants, Morris T. Martin and Carrie E. Martin, and a writ of injunction restraining the said defendants in the manner aforesaid.

15 And your orators will ever pray.

SAMUEL F. ENGS.
GEORGE ENGS.
HENRY SNYDER.

CHAS. BACKUS, *Of Counsel.*
GEORGE F. WESTOVER,
Solicitor for Complainants.

STATE OF ILLINOIS, } ss:
County of Cook, }

George F. Westover, being duly sworn, says he is solicitor for the complainants named in the foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge except as to the matters stated on information and belief, and as to those matters he believes it to be true.

GEORGE F. WESTOVER.

Subscribed and sworn to before me this 24th day of October, 1887.

[SEAL.] CARRIE E. FERGUSON,
Notary Public.

(Endorsed:) Filed Oct. 27th, 1887. Chas. Phillips, clerk.

16 (Copy.)

STATE OF ILLINOIS, } ss:
County of Lake, }

In the Circuit Court of Lake County.

SAMUEL F. ENGS, GEORGE ENGS, and HENRY SNYDER, JR., *vs.* MORRIS T. MARTIN & CARRIE E. MARTIN. } Petition for Removal by Non-resident.

To the honorable the circuit court of Lake county, State of Illinois:

Your petitioners respectfully show that the matter and amount involved in the above-entitled cause exceeds, exclusive of costs, the sum or value of two thousand dollars. Your petitioners further show that the controversy in said suit is between citizens of different States, and that the petitioners were at the time of the commencement of this suit and still are citizens of the State of Illinois, and that all the plaintiffs were then and still are citizens of the State of New York.

And your petitioners offer herewith a bond, with good and sufficient surety, in the penal sum of two hundred & fifty dollars, conditioned for *his* entering in the circuit court of the United States for the northern district of Illinois on the first day of its next session a copy of the record in this suit and for paying all costs if said court shall hold that this suit was wrongfully or im-

17 properly removed thereto.

Your petitioners therefore pray this honorable court to proceed no further herein except to make the order of removal required by law and to accept the said surety bond and to cause the record herein to be removed into said circuit court of the United States within and for the northern district of Illinois, according to the statute in such case made and provided.

And your petitioners will ever pray, etc.

MORRIS T. MARTIN.
CARRIE E. MARTIN.

BISBEE, AHRENS & DECKER,
Attorneys for Petitioner-.

STATE OF ILLINOIS, } ss:
Cook County, }

Morris T. Martin, being duly sworn, on oath deposes and says that he is one of the petitioners in the above-entitled cause; that he has read the foregoing petition and knows the contents thereof, and that the matters and things therein stated are true as he verily believes.

MORRIS T. MARTIN.

Subscribed and sworn to by said Morris T. Martin this seventh day of November, A. D. 1887, before me—

[NOTARIAL SEAL.] JOHN W. PADDOCK,
Notary Public.

(Endorsed:) Filed this 7th day of November, A. D. 1887. Chas. Phillips, clerk.

18 *Copy.*

Know all men by these presents that we, Morris T. Martin, Carrie E. Martin, and Lewis H. Bisbee, as principals; Morris T. Martin and Carrie E. Martin, of Lake county, State of Illinois, & Lewis H. Bisbee, of Chicago, in the county of Cook and State of Illinois, are held and firmly bound unto Samuel F. Engs, George Engs, and Henry Snider, Jr., in the penal sum of two hundred and fifty dollars, lawful money of the United States; for the payment of which, well and truly to be made, we bind ourselves and our heirs, executors, or administrators, jointly and severally and firmly by these presents.

Whereas Morris T. Martin and Carrie E. Martin, principals above named, have petitioned the circuit court of Lake county, in the State of Illinois, for the removal of a certain suit therein pending, wherein Samuel F. Engs, George Engs, and H-nry Snider, Jr., — plaintiffs and the said Morris T. Martin and Carrie E. Martin defendants, unto the circuit court of the United States for the northern district of Illinois:

Now, therefore, the condition of this obligation is such that if the above-bounden Morris T. Martin *Martin* and Carrie E. Martin shall enter and file or cause to be entered and filed in the next circuit court of the United States in and for the northern district of Illinois on the first day of its next session copies of all process, pleadings, depositions, testimony, and other proceedings in a certain suit or action now pending in the said circuit court of Lake
19 county and State of Illinois, in which Samuel F. Engs, George Engs, and Henry Snyder, Jr., are plaintiffs and Morris T. Martin and Carrie E. Martin are defendants, and shall pay all costs that may be awarded by said circuit court if said circuit court shall hold that said cause was wrongfully or improperly removed thereto, and shall also appear in said circuit court and enter special bail in such cause if special bail was originally required therein, and shall do such other appropriate acts as by the act of Congress in that behalf are required to be done upon the removal of such suit from said State court into the United States court, then this obligation to be void; otherwise of force.

Witness our hand and seals this seventeenth day of November, 1887.

MORRIS F. MARTIN. [SEAL.]
CARRIE E. MARTIN. [SEAL.]
LEWIS H. BISBEE. [SEAL.]

STATE OF ILLINOIS, } ss:
Cook County, }

L. H. Bisbee, being duly sworn, says that he is a resident and householder within the county of Cook and worth the sum of ten thousand dollars over and above all debts and liabilities which he owes or has incurred and exclusive of property *except* from levy and sale under execution.

L. H. BISBEE.

Sworn to before me this 7th day of November, 1887.

JOHN W. PADDOCK,
[NOTARIAL SEAL.] *Notary Public.*

20 Filed this 7th day of November, 1887.

CHAS. PHILLIPS, *Clerk.*

UNITED STATES OF AMERICA:

STATE OF ILLINOIS, } ss:
Lake County, }

In the Circuit Court, November Term, A. D. 1887.

Pleas before the Honorable Clark W. Upton, one of the judges of the twelfth judicial circuit of the State of Illinois and sole presiding judge of the circuit court of Lake county, in the State aforesaid, and at a term thereof begun and held at the court-house, in the city of Waukegan, in said county, on the first Monday (being the seventh day) of November, in the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the said United States the one hundred and twelfth.

Present: Honorable Clark W. Upton, judge of the twelfth judicial circuit of the State of Illinois; Charles Phillips, clerk; Charles Whitney, State's attorney; Chase E. Webb, sheriff.

Attest: CHARLES PHILLIPS, *Clerk.*

Be it remembered that on the 7th day of November, A. D. 1887, the same being the first day of the November term, A. D.
21 1887, of said court, the following, among other, proceedings were had and entered of record in said court, to wit:

SAMUEL F. ENGS, GEORGE ENGS, and HENRY SNYDER, JR., *vs.* MORRIS T. MARTIN and CARRIE E. MARTIN. } 82. Ch'y. Bill.

Now, this day, comes the defendants herein, by Bisbee, Ahrens and Decker and Cook and Upton, their solicitors, and file their petition and bond herein and make application for removal of this cause to the Federal court.

And afterwards, to wit, on the 9th day of November, A. D. 1887, the same being one of the days of the November term, A. D. 1887,

of said court, the following, among other, proceedings were had and entered of record in said court, to wit:

SAMUEL F. ENGS, GEORGE ENGS, and HENRY SNYDER
vs.
MORRIS T. MARTIN and CARRIE E. MARTIN. } 82. Bill.

This day come the said defendants, by Bisbee, Ahrens and Decker and Cook and Upton, their solicitors, and presented
22 their petition for the transferring of said cause into the United States circuit court for the northern district of Illinois, and said defendants, Morris T. Martin and Carrie E. Martin, offering as security a bond in the penal sum of two hundred and fifty dollars, with Lewis H. Bisbee as surety, conditioned that said Morris T. Martin and Carrie E. Martin will enter into said United States circuit court on or before the first day of its next session a copy of the record in said cause, and the court, being satisfied with the security offered, doth order that said cause be, and it hereby is, transferred to said United States circuit court for the northern district of Illinois according to the act of Congress if such case made and provided.

—, Charles Phillips, clerk of the circuit court of Lake county, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect, and complete copy of orders in a certain cause lately pending in said court, on the chancery side thereof, wherein Samuel F. Engs, George Engs, and Henry Snyder were complainants and Morris T. Martin and Carrie E. Martin were defendants.

And I further certify that the accompanying papers, five in number, are true copies of the original papers in said cause.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Waukegan, this third (3rd) day of November, A. D. 1887.

CHARLES PHILLIPS, *Clerk.*

Endorsed: Filed Dec. 5th, 1887. Wm. H. Bradley, clerk.

23 Afterward, to wit, on the tenth day of December, 1887, came the defendants, by their solicitors, and filed in said clerk's office their answer in said entitled cause; which said answer is in the words and figures following, to wit:

Answer.

UNITED STATES OF AMERICA, *Northern District of Illinois,* } *ss:*

In the Circuit Court of the United States for the Northern District of Illinois.

SAMUEL F. ENGS, GEORGE ENGS, and HENRY SNYDER, JUNIOR,
vs.
MORRIS T. MARTIN and CARRIE E. MARTIN.

The joint and several answer of Morris T. Martin and Carrie E. Martin to the bill of complaint of Samuel F. Engs, George Engs, and Henry Snyder, Junior, *vs.* Morris T. Martin and Carrie E. Martin, defendants.

These defendants, reserving to themselves all manner of benefit to the many exceptions and informalities in the bill of complaint in this cause contained, and praying therein the same advantage as if they had demurred thereto, for answer to so much thereof as they deem material, answering, say that, having no knowledge upon the subject, they neither admit nor deny that the complainants, in the superior court of Cook county, on the 4th day of December, 1882, recovered a judgment against this defendant, Morris T. Martin, together with one Henry C. Lawrence, for the sum of nine thousand seven hundred and sixty dollars and thirty-four cents
24 ($9,760.34) and costs; hence they neither admit nor deny the same; but, if said allegation is material, they leave complainant- to make strict proof thereof.

They deny that any such indebtedness was contracted by Morris T. Martin and Henry C. Lawrence on or about the 25th day of April, 1882. They further answer that they have no knowledge as to whether or not an execution was issued upon any such judgment against this defendant, Morris T. Martin, and Henry C. Lawrence; and, if such allegation is material, they leave complainants to make strict proof thereof. Further answering said bill of complaint, this defendant, Morris T. Martin, denies that he has any real estate or any interest in any real estate or has any money in hand or any money deposited or held for him or held for his credit or use, and denies that he has any stocks, bonds, promissory notes, insurance policies, horses, carriages, or other vehicles and other equipments, or that he has any watches, diamonds, jewelry, or personal ornaments, silverware, pictures, furniture, fixtures, or any other property, or any equitable interest in any choses in action of any kind or nature whatever, or that he has concealed any interest in any property of any kind, or that any property or any interest of any property belonging to him is held in trust for him in any shape, name, or manner.

Further answering, this defendant, Morris T. Martin, denies that since the 4th day of December, 1882, he has put out of his hands,

name, or possession by any pretended sale, assignment, conveyance, gift, confidence, bailment, or delivery, or by some other secret or cunning device or contrivance, any real or personal property with intent to deceive, hinder, delay, and defraud the complainants of their said judgment, if any they have, or deceive, hinder, and
25 delay any creditors of said Morris T. Martin and said Lawrence. Further answering, this defendant denies that any property belonging to him is held in secret trust in any manner by any person or persons to whom the same has been tr-nsferred, or that there is any private understanding or agreement that there is any property interest whatever belonging to this defendant, Morris T. Martin, which shall inure to the benefit of said Morris T. Martin, or that he has any interest in any manner or form or any equity, secret or otherwise, in any property, real or personal, anywhere on the face of the earth; and said Morris T. Martin further denies that he has neglected or refuses to apply any property or interest in property of any kind to the payment of said judgment, if any there be.

Further answering, this defendant, Morris T. Martin, denies that since the recovery of said judgment, if any was recovered, he has purchased any real estate whatever situated in the county of Lake and State of Illinois and caused the title thereof to be conveyed to and invested in the defendant Carrie E. Martin; and this defendant, Carrie E. Martin, denies that said Morris T. Martin has purchased any real estate in Lake county or elsewhere, the title of which has been vested in her; and these defendants jointly deny that any funds used in the purchase of any real estate in Lake county, Illinois, were the funds of Morris T. Martin and not the separate and individual property of the said Carrie E. Martin; and these defendants jointly deny that there was any transaction by which Morris T. Martin purchased any such real estate and caused the title thereof to be conveyed — and invested in the said Carrie E. Martin; and these defendants jointly deny that any real estate in Lake
26 county or elsewhere has been purchased by Carrie E. Martin for the purpose of com-itting any fraud upon the creditors of said Morris T. Martin, or that said Carrie E. Martin has purchased any real estate in said Lake county, the consideration of which was paid by the said Morris T. Martin, and they jointly deny that Carrie E. Martin holds any real estate in secret trust for the said Morris T. Martin and in fraud of the creditors of the said Morris T. Martin.

Further answering, these defendants deny that there is any real estate situated in Lake county, Illinois, the title of which is in Carrie E. Martin, which was placed there for the purpose of hindering and delaying the complainants in the collection of said judgment, if any such judgment there is.

Further answering, these defendants deny that there is any real estate held in the name of Carrie E. Martin which in equity ought to apply to the payment of any debts due from Morris T. Martin, and they particularly deny that any of the real estate described in said bill of complaint was purchased by Morris T. Martin, or that he ever had any interest therein in any form, name, shape, or man-

ner, and deny that there is any equity in said real estate which ought to apply to the payment of the complainant's said judgment, if any he has, or that any fraud or deceit has been practiced in the purchase of said real estate by said Carrie E. Martin.

Further answering, these defendants say that all the real estate mentioned in said bill of complaint was purchased by said Carrie E. Martin in her own individual capacity and by herself and is owned by her and was paid for by her own money, and that no portion of the consideration price thereof was paid by said Morris T.
27 Martin, or that he, said Morris T. Martin, has any interest whatever therein, and the said Morris T. Martin states that he has no interest in any personal property whatever, nor has he any money on hand nor any debts due him, nor has he any mort-ages, securities, life-insurance policies, horses, carriages, or other vehicles and other equipments, watches, diamonds, jewelry, personal ornaments, silverware, pictures, furniture, fixtures, or other property, or any choses in action, either in his own name or held in trust for him or in which he has any interest, and he denies that he has put anything out of his possession or placed the same in secret trust or done any act or thing to dispose of any property in any form or manner to the prejudice of said complainants, and the said Carrie E. Martin states that she holds no property, real or personal, in trust for said Morris T. Martin, nor has said Morris T. Martin any interest of any kind in any property held by the defendant Carrie E. Martin.

And now, having fully answered said bill of complaint, they pray that the same may be dismissed at the costs of said complainants.

CARRIE E. MARTIN &
MORRIS T. MARTIN,
By BISBEE, AHRENS & DECKER,
Their Solicitors.

BISBEE, AHRENS & DECKER, *Of Counsel.*

(Endorsed:) Filed Dec. 10, 1887. Wm. H. Bradley, clerk.

28 Afterward, to wit, on the sixteenth day of January, 1888, in the December term of said court, 1887, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

SAMUEL F. ENGS *et al.*
vs.
MORRIS T. MARTIN *et al.* } In Chancery.

On motion of defendants' solicitor, the complainants are hereby ruled to reply herein.

Afterward, to wit, on the eighteenth day of January, 1888, came the complainants, by their solicitor, and filed in said clerk's office their replication to the answer in said entitled cause; which said replication is in the words and figures following, to wit:

Replication.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois. }

In the Circuit Court of the United States, Northern District of Illinois, December Term, 1887.

SAMUEL F. ENGS, GEORGE ENGS, and HENRY SNYDER } In Chancery.
vs.
MORRIS T. MARTIN and CARRIE E. MARTIN. }

29 The replication of Samuel F. Engs, George Engs, and Henry Snyder, complainants, to the answers of Morris T. Martin and Carrie E. Martin, defendants.

These repliants, saving and reserving to themselves all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendants, for replication thereunto saith that they do and will aver, maintain, and prove said bill to be true, certain, and sufficient in the law to be answered unto by the said defendants, and that the answers of the said defendants are very uncertain, evasive, and insufficient in the law to be replied unto by these repliants; without this, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things these repliants are ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

GEORGE F. WESTOVER.
Solicitor for Complainant-.

(Endorsed:) Filed this 18th day of January, 1888. Wm. H. Bradley, clerk.

30 Afterward, to wit, on the sixth day of March, in the adjourned March term of said court, 1888, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

SAMUEL F. ENGS *et al.* } In Chancery.
vs.
MORRIS T. MARTIN *et al.* }

On motion of George F. Westover, for the complainant-, it is ordered that this cause be referred to E. B. Sherman, master in chancery, to take testimony.

Afterward, to wit, on the fourth day of June, 1888, there was filed in said clerk's office a stipulation in said entitled cause; which said stipulation is in the words and figures following, to wit:

Stipulation.

In the United States Circuit Court, Northern District of Illinois.

SAMUEL F. ENGS *et al.*
vs.
HARRY C. LAWRENCE *et al.*

It is hereby stipulated that complainants have till the 1st
31 October, 1888, to take depositions of complainants' witnesses in the above-entitled cause.

BISBEE, AHRENS & DECKER, *Def'ts' Att'ys.*

(Endorsed:) Filed June 4, 1888. Wm. H. Bradley, cl'k.

On the same day, to wit, on the fourth day of June, in the adjourned May term of said court, 1888, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

SAMUEL F. ENGS, GEORGE ENGS, and HENRY SNYDER, JR.,
vs.
HENRY C. LAWRENCE, MORRIS T. MARTIN, and CARRIE E. MARTIN.
} In Chancery.

Upon reading the stipulation filed in this cause it is ordered that the complainants in the above-entitled cause have till the first day of October, A. D. 1888, to take the depositions of complainants' witnesses.

32 Afterwards, to wit, on the twenty-ninth day of September, 1888, there was filed in said clerk's office a stipulation in said entitled cause; which said stipulation is in the words and figures following, to wit:

Stipulation.

In the United States Circuit Court, Northern District of Illinois.

ENGS *et al.*
vs.
LAWRENCE *et al.*
} In Chancery.

It is hereby stipulated that the complainants shall have further time till the first day of December, 1888, to take testimony in above

cause, and defendants shall have till the 15th day of January, 1889, to take their testimony in above cause.

BISBEE, AHRENS & DECKER,
Att'ys for Def'ts Martin & Wife.
GEORGE F. WESTOVER,
Solicitor for Complainants.

(Endorsed:) Filed Sept. 29, 1888. Wm. H. Bradley, clerk.

33 On the same day, to wit, on the twenty-ninth day of September, in the July term of said court, 1888, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

SAMUEL F. ENGS *et al.*
vs.
HENRY C. LAWRENCE, MORRIS T. MARTIN, *et al.* } In Chancery.

Upon stipulation this day filed it is ordered that the complainants shall have further time, till the first day of December, 1888, to take testimony in above cause and defendants shall have till the fifteenth day of January, 1889, to take their testimony in above cause.

Afterwards, to wit, on the fourth day of December, 1888, there was filed in said clerk's office a stipulation in said entitled cause; which said stipulation is in the words and figures following, to wit:

Stipulation.

In the United States Circuit Court, Northern District of Illinois.

SAMUEL F. ENGS & Others, Complainants,
vs.
HENRY C. LAWRENCE, MORRIS T. MARTIN, & CARRIE E. MARTIN, Defendants. } In Chancery.

34 It is hereby stipulated that the above-named complainants have 30 days' further time to close their proofs in this suit, and that the defendants have 30 days' further time to close their proofs after complainants have closed their testimony.

GEORGE F. WESTOVER,
Sol'r for Compl'ts.
BISBEE, AHRENS & DECKER,
Att'ys for Def'ts Martin & Wife.

Dated 30th Nov., 1888.

(Endorsed:) Filed Dec. 4, 1888. Wm. H. Bradley, clerk.

On the same day, to wit, on the fourth day of December, in the adjourned October term of said court, 1888, in the record of the pro-

ceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

SAMUEL F. ENGS *et al.*
vs.
HENRY C. LAWRENCE *et al.* } In Chancery.

Upon stipulation this day filed it is ordered that the complainants may have thirty days further time to close their proofs herein, and that the defendants may have thirty days thereafter in which to close their proofs.

35 Afterward, to wit, on the twenty-third day of April, 1889, came George F. Westover and filed in said clerk's office his affidavit in said entitled cause; which said affidavit is in the words and figures following, to wit:

Affidavit of Death of Complainants.

In the Circuit Court of the United States for the Northern District of Illinois.

SAMUEL F. ENGS, GEORGE ENGS, and HENRY SNYDER, JR.,
vs.
MORRIS T. MARTIN and CARRIE E. MARTIN.

STATE OF ILLINOIS, } *ss*:
Northern District, }

George F. Westover, being duly sworn, says he is solicitor for the complainants in the above-entitled cause; that the said complainants were at the time this proceeding was begun and at the time of the recovery of the judgment upon which this proceeding is based partners doing business under the firm name of P. W. Engs & Sons in the city, county, and State of New York; that the said judgment upon which this proceeding was based was recovered by the said complainants, as partners of said firm of P. W. Engs & Sons, upon an indebtedness of the defendants in said judgment to the said firm of P. W. Engs & Sons; that the said firm of P. W. Engs & Sons, consisting of the foregoing-named persons, as complainants, owned the said judgment at the time this action was brought; that lately and since this action has been pending the said complainants,
36 Samuel F. Engs and George Engs, have died, and that the complainant Henry Snyder, Jr., is now the sole surviving partner of the said firm of P. W. Engs & Sons, which was composed of the said Samuel F. Engs, George Engs, and the said Henry Snyder, Jr.

And this affiant, in behalf of the said Henry Snyder, Jr., surviving partner of the said firm composed of the complainants aforesaid, prays the court that the said Henry Snyder, Jr., as surviving partner of the said firm, be substituted as complainant in this action, and that it be prosecuted in his name as such surviving partner.

GEORGE F. WESTOVER.

Subscribed and sworn to before me this 11th day of April, 1889.
[SEAL.] DUNCAN SHADE GOODING,
Notary Public.

Let the order be entered as prayed for above.
BISBEE, AHRENS & DECKER,
Def' ts' Att'ys.

(Endorsed:) Filed Ap'l 23, 1889. Wm. H. Bradley, clerk.

37 Afterward, to wit, on the twenty-sixth day of April, in the adjourned March term of said court, 1889, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

SAMUEL F. ENGS, GEORGE ENGS, and HENRY SNYDER, JR., *vs.* MORRIS T. MARTIN and CARRIE E. MARTIN. } In Chancery.

Now comes the complainants' solicitor, George F. Westover, Esq., and suggests to the court the death of the said Samuel F. Engs and George Engs, and upon his motion and upon stipulation filed herein on the 23d instant it is ordered that said Henry Snyder, Jr., the surviving partner of the firm composed of said complainants, be substituted as complainant in this action, and that it be prosecuted in his name as such surviving partner.

38 Afterward, to wit, on the seventh day of May, in the adjourned May term of said court, 1889, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

HENRY SNYDER, JR., Survivor of Samuel F. Engs *et al.*, Deceased, *vs.* MORRIS T. MARTIN *et al.* } In Chancery.

Now come the parties, by their solicitors, and by leave of court this cause is submitted on pleadings and proofs and the court takes the same under advisement. Briefs are to be filed within ten days.

39 Afterward, to wit, on the twenty-seventh day of July, in the July term of said court, 1889, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

HENRY SNYDER, JR., Surviving Partner of the Firm of P. W. Engs & Sons, Composed of Samuel F. Engs, George Engs, and Henry Snyder, JR., *vs.* MORRIS T. MARTIN and CARRIE E. MARTIN. } In Chancery.

This cause came on to be heard at this term and was argued by counsel, and thereupon, upon consideration thereof, the court found the equities in favor of the complainant; and on motion of complainant's solicitor it was ordered, adjudged, and decreed as follows, to wit:

That the title of the defendant Carrie E. Martin in and to the premises described in the bill of complaint is in fraud of the creditors of the defendant Morris T. Martin and in fraud of the complainant as one of such creditors, and the said premises ought in equity to be subject to the judgment of the complainant set out in the bill of complaint.

It is further ordered and decreed that the said real estate or so much thereof as may be necessary to satisfy the complainant's said judgment, with the interest thereon and the costs of this proceeding and the costs and charges of sale, be sold by E. B. Sherman, a master in chancery of this court, by public auction, unto the highest bidder, for cash, and that the complainant herein, his agents or attorneys, have the privilege to purchase at said sale, and that
40 the said master in chancery give such notice of sale thereof as is required in sales of real estate under decrees in chancery according to the rules and practice of this court.

It is further ordered that from the proceeds of such sale the said master in chancery first pay the costs and charges of sale and the costs of this proceeding, and that he then pay the complainant or his solicitor the sum due the complainant upon his said judgment, to wit, the sum of nine thousand seven hundred and sixty dollars and thirty-four cents, with interest thereon from the fourth day of December, 1882.

And it is further ordered that the purchaser or purchasers at such sale shall acquire all the right, title, and interest which the defendants, Morris T. Martin and Carrie E. Martin, or either of them had on the 27th day of October, 1887, in and to the premises which shall be sold by virtue hereof, subject to the right of redemption as provided by law; and if the time provided by statute for redemption shall expire and said premises so sold shall not be redeemed from such sale, then the said master in chancery shall execute a deed or deeds of conveyance of said premises to the purchaser or purchasers thereof, and the defendants shall be barred of all right and equity of redemption therein and the purchaser or purchasers shall be let into possession thereof.

The real estate herein referred to is described as follows, to wit:

The south half of the southeast quarter of section number twenty-eight (28) and the northwest quarter of the northeast quarter of section number thirty-three (33) and that part of section number

thirty-three (33) aforesaid which is described as follows: Be-
41 ginning at the northeast corner of said section number thirty-three (33) and running thence south forty-five (45) degrees west twenty-eight (28) chains and thirty (30) links to the southwest corner of the northeast quarter of the northeast quarter of said section number thirty-three (33); thence north twenty (20) chains to the northwest corner of the said northeast quarter of the said northeast quarter of said section number thirty-three (33), and thence east twenty (20) chains to the place of beginning, being the northwest half of said quarter of quarter section, all of said premises and real estate being in township number forty-six (46) north, of range number ten (10) east, of the third principal meridian, containing in all one hundred and forty (140) acres, more or less.

Also the following-described land, to wit: Commencing twenty (20) rods east of the southwest corner of section number thirty-five (35), in township number forty-six (46) north, of range number ten (10) east, of the third principal meridian, and running thence south forty (40) rods and thence east eight (8) rods, thence north forty (40) rods, and thence west eight (8) rods to the place of beginning, containing two (2) acres, more or less, said land being a part of section two (2), in township forty-five (45) north, of range ten (10) east, of the third principal meridian; also the following-described land, to wit, being in township forty-five (45) north, of range ten (10) east, of the third principal meridian, known and described as follows: Commencing sixteen (16) rods east of the southwest corner
of section thirty-five (35) aforesaid and running thence south
42 forty (40) rods, thence east four (4) rods, thence north forty (40) rods, thence west four (4) rods to the place of beginning, containing one (1) acre, and being on the west half of the northwest quarter of said section two (2).

Also the following-described land, to wit: The east two-thirds of the west half of the southwest quarter of section number thirty-five (35), in township number forty-six (46) north, of range number ten (10) east, of the third principal meridian; also the following-described land, to wit: Commencing twenty-nine (29) rods east of the northwest corner of the northwest quarter of section number two (2), in township number forty-five (45) north, of range number ten (10) east, of the third principal meridian, and thence running south forty (40) rods, thence west five (5) rods, thence south forty (40) rods, thence east forty-five (45) degrees north to a point twenty-four (24) rods south of the northeast corner of the west half of the northwest quarter of said section number two (2), in township and range last mentioned; thence north twenty-four (24) rods to the place of beginning, reserving from the last-mentioned piece or tract of land one-fourth of an acre deeded by Peter Luther to certain persons for a school-house lot.

Also the east half of the northwest quarter and the northeast quarter of the southwest quarter of section number thirty-five (35), in township number forty-six (46) north, of range number ten (10) east, of the third principal meridian, containing one hundred and twenty (120) acres or less; also part of the southeast quarter of

the southwest quarter of section number twenty-six (26), in the township and range aforesaid, described as follows: Commencing at the southeast corner of said quarter quarter section, and run-
43 ning thence west thirty-seven (37) rods, thence north to the centre of the Waukegan road (so called), thence southeasterly along the center of said road to the east line of said quarter quarter section, thence south to the place of beginning, containing one and one-half acres, more or less; all which parcels of land are situate in the county of Lake and State of Illinois.

And the defendants, having entered their exceptions herein, pray an appeal to the Supreme Court of the United States, which is allowed them on their filing herein their appeal bond in the penal sum of fifteen hundred dollars, with surety to be approved by one of the judges of this court, together with a certificate of evidence to be filed herein within sixty days from this date, said bond to operate as a supersedeas.

44 On the same day, to wit, on the 27th day of July, 1889, there was filed in said clerk's office a certificate of evidence in said entitled cause; which said certificate of evidence is in the words and figures following, to wit:

Certificate of Evidence.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court Thereof.

HENRY SNYDER, JR., Surviving Partner of the Firm of P. W. Engs & Sons, Composed of Samuel F. Engs, George Engs, and Henry Snyder, Jr., Complainant,
vs.
MORRIS T. MARTIN and CARRIE E. MARTIN. } In Chancery.

Be it remembered and certified that, on the hearing of this cause at this term upon the bill of complaint, answer to said bill, and the replication to such answer, as well as the testimony taken and reported by the master in chancery of this court and other documents used on the hearing, the complainant and defendants introduced the following testimony, to wit:

The depositions of Morris T. Martin and Carrie E. Martin and certain documentary evidence attached to their depositions, as set forth in the report of the master filed in this cause; which said report and depositions and documentary evidence are as follows, to wit:

45 In the Circuit Court of the United States for the Northern District of Illinois.

SAMUEL F. ENGS, GEORGE ENGS, and HENRY SNYDER
vs.
MORRIS T. MARTIN and CARRIE E. MARTIN. } In Chancery.

Testimony in behalf of complainants taken pursuant to an order of reference in said cause before Elijah B. Sherman, a master in chancery of said court, commencing on the 28th day of September, 1888, and continuing from time to time, as hereinafter noted.

Present: George F. Westover, for complainants, and L. H. Bisbee, for defendants.

SEPTEMBER 28TH, 1888.

Said cause having come on for hearing for the purposes in an order of reference made therein, pursuant to due notice, and counsel for defendants desiring that the same should be continued, the hearing is therefore continued, upon motion of counsel for defendants, until Tuesday, October 2nd, at 11 o'clock a. m.

46 OCTOBER 2ND, 1888.

Upon motion of counsel for complainants and by stipulation of counsel for the respective parties, the hearing of said cause is continued until Wednesday, October 10th, at 11 o'clock a. m.

OCTOBER 10TH, 1888.

Present: George F. Westover, Esq., for complainants, and L. H. Bisbee, Esq., for defendants.

Examination resumed pursuant to adjournment.

CARRIE E. MARTIN, being duly sworn, testified on behalf of complainants as follows:

Direct examination by Mr. WESTOVER:

Q. What is your name?
A. Carrie E. Martin.
Q. You are the Carrie E. Martin who is named as one of the defendants in this bill in chancery?
A. I am.
Q. Where do you reside, Mrs. Martin?
A. I reside in Lake county, Illinois.
Q. How long have you resided there?
A. We have lived there three years.
Q. Where did you reside previous to your residence in Lake county?
A. I lived at 1350 Oakwood boulevard, Hyde Park.
Q. Are you the wife of the defendant Morris T. Martin?
A. I am.

Q. When were you married?
A. I was married January 10th, 1881.
Q. At what place?
A. Terre Haute, Indiana.
Q. Do you reside on a farm in Lake county?
A. I do.
Q. How large is the farm upon which you reside?
A. The farm that I live on contains 80 acres.
47 Q. Is the title to that farm in yourself?
A. It is.
Q. And have you also other lands in the vicinity not far from there?
A. I have a farm that joins on that of 123 acres, I believe, that joins on the farm that we live on, and about a mile and a half from there I have another farm that contains 140 acres.
Q. Do not those three farms that you have described constitute all the real estate which you hold in your name in Lake county?
A. They do.
Q. Of whom did you purchase the 80-acre farm upon which is your homestead?
A. I purchased that farm of William Emmett. I purchased it rather of Mr. and Mrs. Emmett. Mrs. Emmett owned the farm.
Q. Where do Mr. and Mrs. Emmett reside?
A. Mr. Emmett is dead, and Mrs. Emmett lives somewhere in Chicago. I couldn't give you her present address.
Q. Where did they reside while Mr. Emmett lived?
A. They lived on the farm until I bought it, and Mr. Emmett's health was very poor at the time and he went out of the State.
Q. The farm which is contiguous to that, of whom did you purchase that?
A. That farm I bought of Mr. A. S. Trude, of Chicago.
Q. Of whom did you purchase the farm that you say lies about a mile and a half away?
A. I purchased that of the heirs; Spring is the name, but the father was dead and the business was done through Mr. Muir, the administrator.
Q. The number of acres in the Emmett farm where you reside is 80?
A. About 80.
48 Q. And the number in the Trude farm adjoining?
A. I think it is 121½.
Q. And the number in the other farm half a mile away, which you purchased of Spring, which we will call the Spring farm, is 130?
A. 140.
Q. Then you have about 340 all told?
A. About that; 121½, 80, and 140.
Q. Are all those farms free of encumbrance?
A. They are.
Q. Have you paid for them all?
A. I have paid for them all.

Q. When did you purchase the first one which you bought?
A. I purchased the Spring farm first, about the 1st of October, 1885.
Q. How much did you pay for that?
A. I paid $55 an acre, and there is 140 acres.
Q. And when did you purchase the next one?
A. I purchased the Emmett farm the last of the same month, the same year.
Q. And how much did you pay for that?
A. I paid 44—between 44 and 45 hundred for that, and I assumed a mortgage of $1,250.
—. Besides the 44 hundred which you paid?
A. Besides the 44 hundred.
Q. You paid 44 hundred for the equity?
A. For the equity in the Emmett farm.
Q. And then you paid the mortgage?
A. I paid the mortgage the following year; it came due the following year.
Q. How much did you say the mortgage was?
A. It was $1,250; that was a mortgage that Mr. Emmett had put on the farm.
Q. That made the purchase price of that farm about $5,600?
A. About that—$5,650.
Q. In the purchase of the Emmett farm was anything but the real estate included?
49 A. There was; there was stock on the farm; there were the household goods. Mr. Emmett's health was poor, and they left everything but their wearing apparel; they took that with them.
Q. Please give a statement, if you can, of the stock on the farm when you bought it.
A. There were cattle on the farm.
Q. How many?
A. I think 15 head of cattle. There were horses on the farm.
Q. Do you know how many?
A. There was about—well, I think there was about 10 horses on the farm that I got with the place. There were more on the farm that belonged to outsiders that Mr. Emmett was boarding. I think I got 10. The furniture in the house—the farm-house was furnished, and I got that with the farm. I think there was no other stock there. Their buggies, harnesses, and other things, they were all included.
Q. Farming tools?
A. Farming tools were all included.
Q. Have you the same farming tools still?
A. I have.
Q. The stock also?
A. I have, with the exception of two of the cattle that have been sold.
Q. When did you purchase the Trude farm?
A. I purchased the Trude farm in the fall of 1886.

Q. And what did you pay for that?
A. I paid $4,500 for the Trude farm.
Q. That included nothing but the farm?
A. That included nothing but the farm and the buildings that were on the farm—farm-house.
Q. Have you resided on the Emmett farm since that purchase?
A. I have lived there since the following May. We bought the farm in the fall and moved in May on the farm.
Q. Your husband with you there?
A. My husband lives with me there; yes, sir.
50 Q. And any other family besides your husband?
A. I have a child, and my mother lives with me.
Q. Does that constitute your family?
A. That constitutes my family.
Q. Your mother, husband, self, and child?
A. Yes, sir; my child is 5 years and a half old.
Q. Have you a residence anywhere else but that on the farm?
A. I have a residence on Oakwood boulevard, Hyde Park, where I lived before moving into the country.
Q. Have you occupied that at all since you first removed to Lake county?
A. I have not.
Q. What have you done with it?
A. I have rented it.
Q. When did you purchase that residence on Oakwood boulevard?
A. I bought that in the spring of 1885.
Q. Of whom?
A. Of William McKeever.
Q. For how much?

(Objected to.)

A. The house and grounds were valued at $10,500. I assumed a mortgage of $5,000. I paid him the $5,500 and assumed a mortgage of $5,000. That is still on the house.
Q. Do you own any other real estate?
A. I have an equity in another house in Park manor.
Q. Where is that?
A. Lies south of Chicago, between Chicago and Englewood.
Q. It is suburban?
A. It is.
Q. Is the title to that equity in your name?
A. It is.
Q. Is the title to that boulevard property in your name?
A. It is.
Q. What is the value of your equity in the Park Manor property?
A. Well, I don't know what value is set on that. The
51 house is valued at about 7 or 8 thousand dollars, and there is a mortgage of about $6,000 on it, and of course that is the value we set on it, but whether that is the value of it or not——

Q. Do you mean that is the value of the entire property if cleared?

A. Yes, sir.

Q. Then what value do you put upon the equity?

A. About $2,500.

Q. More or less?

A. More or less; not much more, considerable less.

Q. What property have you added to the Emmett farm, where you reside, since you purchased it, if any?

A. I have bought a few farm implements, and I have bought things around the house, and I have added a few horses there, and there are colts growing up all the time and stock in that way.

Q. Have you put any improvements on the farm—permanent improvements?

A. I have. I have built a barn there.

Q. Any permanent improvements on the house?

A. None.

Q. Have you put any permanent improvements on either of the other two farms?

A. I have not.

Q. What is the cost of the improvements which you have put upon the Emmett farm?

A. I think the bills all told were about $2,000 for the barn.

Q. How much have you invested in stock since you have been there?

A. I have probably invested about 2 or 3 thousand dollars in stock all told.

Q. Have you been carrying on farming on the three farms?

A. I have.

Q. For how many summers?

A. I rented the Spring farm or rather there were relatives
52 lived on the Spring farm for the first two seasons after we owned it. This season we have worked it ourselves, and the Trude farm I have had worked since I owned it, and the Emmett farm the same.

Q. What have you done with the income from the farm?

A. Well, the income from the farm at present hasn't been very much; we have lived, and——

Q. Simply you have used it. How, in supporting your family?

A. In supporting the family and the place.

Q. In making these improvements that you have designated?

A. In making improvements, taking care of the stock, and paying the help, and a great many things like that.

Q. For the improvements which you have made and the stock which you have added, have you obtained the funds entirely from the income from the farm?

A. It has not been entirely self-paying; I have used other money that I have had in supporting the farm.

Q. Were you engaged in business prior to your purchasing the first farm?

A. I was. I was engaged in business in Chicago.

Q. Where were you engaged in business?
A. It was in the alley back of the old board of trade.
Q. What was your business?
A. There was a stock exchange called the Phenix grain and stock exchange.
Q. Was that owned by you?
A. That was; at least the stock was owned by me
Q. Was it a stock concern?
A. It was a stock concern, and I owned half of the stock.
Q. And who owned the other half?
A. The other half was owned by a Mr. Campbell and Mr. Skakel; they each had 25.
53 Q. Was it a corporation?
A. It was.
Q. Of whom did you purchase your stock?
A. The stock company was formed and I purchased a half interest in the stock of the company.
Q. Of the company you purchased it?
A. Yes, sir.
Q. How much was your stock?
A. The company, I think, was incorporated for $300,000.
Q. What did you pay the company for your $150,000 in stock?
A. I paid the company between $500 and $600.
Q. Where did you obtain that $500 or $600?
A. William Skakel loaned it to me.
Q. You borrowed it?
A. I borrowed the money of Mr. Skakel.
Q. On your note—individual note?
A. I did.
Q. How long were you engaged in that business?
A. I was engaged in that business—the corporation or the company rather were in business there until the next spring, when they moved from that place into the Brevoort house, and I was engaged in that business until 1886, I believe.
Q. You still retained your interest in it after you removed to Lake county, did you?
A. I had an interest after we moved into the country; for awhile.
Q. The same interest which you held before?
A. The corporation had been changed—the Phenix had been changed to the New York and I still had a half interest in that.
Q. What was the name?
A. The New York and Chicago grain and stock exchange.
Q. And what was the full name before they changed?
A. Phenix grain and stock exchange.
54 Q. Who managed the Phenix grain and stock exchange?
A. My husband and my brother.
Q. What is your brother's name?
A. William Wolfe.
Q. Where does he reside?
A. He resides in Chicago; he resides on 39th St., and he is on the side that is in Chicago.

Q. Do you know when the Phenix grain and stock exchange first opened business?

A. The Phenix grain and stock exchange was organized in September, 1883.

Q. And how soon after that did you buy the stock? At the same time?

A. Yes, sir.

Q. At its organization?

A. Yes, sir.

Q. Did you personally attend to the business of the exchange?

A. I did not; I engaged Mr. Bisbee as an attorney, and Mr. Martin as the agent to act.

Q. For your interests?

A. For my interests in the business.

Q. Did you derive from that business the funds with which you purchased the farms?

A. I did.

Q. You had none of these funds when you were married?

A. No, sir.

Q. How long had you been married previous to your entering into the Phenix grain and stock exchange?

A. I was married in January, 1881; this was started in September, 1883; I would have been married 3 years the——

Q. Where did you reside before you were married?

A. I lived in Terre Haute, Indiana.

Q. Did you ever yourself go to the rooms of the Phenix grain and stock exchange?

A. I have been in the office a great many times when it was necessary that I should be there, and I have transacted busi-
55 ness also in the lawyer's office when it was convenient.

Q. For what purpose did you go to the rooms of the exchange?

A. I have gone there to attend to matters that were concerning the business.

Q. What matters called your attention there?

A. Sometimes the transfer of stock, &c.

Q. Were you an officer?

A. No, sir.

Q. Did you sign the transfers of stock?

A. I did when it was necessary.

Q. You mean you signed transfers of your own stock?

A. When the companies were changed.

Q. From the Phenix to the New York?

A. Yes, sir.

Q. Well, then what did you do?

A. Then I subscribed for stock in the New York.

Q. And cancelled your stock in the Phenix?

A. I cancelled, I think, my stock in the Phenix when it was changed into the New York.

Q. Did the Phenix grain and stock exchange, as a company, own property or assets when the New York was formed?

A. I think it did. It was just a change—they changed the——
Q. Just a change of name?
A. It was a change of name.
Q. And whatever assets the Phenix had were transferred to the New York?
A. I think they were.
Q. Have you any objection to stating what the reason was for making the change in name?
A. Well, there was a change in the place of business and I don't remember what was the——
Q. At whose suggestion was the change of name made?
A. Well, I presume at the suggestion of the stockholders.
Q. You were the largest stockholder?
A. Yes, sir.
Q. Was it at your suggestion?
A. Well, they wanted to change the name—the others—
56 and they wanted to get a new company, I believe.
Q. And you had no objections?
A. I had no objections.
Q. Who suggested to you that the name be changed?
A. My brother, who was employed there, the attorney, my husband, and the others.
Q. Was your brother a stockholder?
A. He was not a stockholder, but he was employed there.
Q. Was he an officer?
A. I think not in that company. I don't remember whether he was or not. I can't tell.
Q. Did that company have officers?
A. It had the office first in the alley back of the board of trade and next in the Brevoort house.
Q. Did the company have a president?
A. It did.
Q. Who was the president?
A. I don't remember now.
Q. Did it have a secretary?
A. It had a secretary and treasurer, but I don't remember who held those positions now.
Q. Do you know whether it had a board of directors or trustees?
A. I presume it did.
Q. You don't know?
A. I don't remember now.
Q. Did you ever attend any meetings of the stockholders of that company?
A. Not personally, I believe.
Q. You were represented by proxy?
A. I was.
Q. Who represented you at such meetings?
A. My husband represented me.
Q. Did he hold the proxy with power to vote your stock?
A. I think he did.
Q. Do you know whether you were personally a director?

A. I think not. I couldn't answer that. I think not.
Q. Your husband was not a director, was he?
A. I couldn't say. I don't remember that.
Q. Did your husband hold any stock in the company himself?
57 A. I believe he had one share.
Q. Probably to entitle him to hold some office, or don't you know?
A. It may have been; I don't remember.
Q. How did you get your returns from that company?
A. There were dividends declared and paid to me.
Q. How often?
A. I think every 2 or 3 months.
Q. Did you pay your husband a salary for his attention there?
A. I did.
Q. How much?
A. $30 a week. It was paid by the company.
Q. How often were those dividends declared, Mrs. Martin?
A. I said I thought they were declared every 2 or 3 months.
Q. How large, Mrs. Martin, were those dividends usually; how much per cent. on the stock?
A. I don't remember now what the per-cent. was.
Q. Do you recollect what the amount of the dividends was or about what the amount of the dividends was received by you?
A. I couldn't remember; I couldn't state that now; I don't remember. The dividends were quite large.
Q. Did you continue to receive dividends frequently during the entire connection you had with that company and the New York company?
A. I did.
Q. Do you own the stock still?
A. I do not.
Q. When did you finally part with your stock in the New York company?
A. I think in 1877—1886 or 1877; I can't recollect the date.
Q. Did you sell it?
A. I did.
Q. To whom?
A. I think I sold it to the company.
Q. Did you receive a compensation for it when you sold it?
A. I did.
Q. How much?
A. I don't remember.
Q. Can you approximate about what you got for that stock?
58 A. I don't recollect it now.
Q. Did you get as much as $10,000 for it?
A. Yes, sir; I think I did.
Q. Did you get more than that?
A. No; I think not.
Q. About $10,000, you think?
A. Probably less than that.

Q. Probably less than $10,000?
A. Yes, sir.
Q. Did you get as much as you paid?
A. Well, I paid $500 when I started, so I got more than I paid for it.
Q. Did you get it in cash?
A. I don't remember whether they paid me in cash or not.
Q. If not in cash, how were you paid?
A. I don't remember now. I presume I was paid in cash.
Q. Who paid you?
A. The company.
Q. How?
A. My brother, I believe, was acting at that time.
Q. For the company?
A. I believe so; yes, sir.
Q. Then did you negotiate the sale of that stock through your brother or to your brother?
A. I negotiated through my lawyer.
Q. And your brother acted for the company in that negotiation?
A. He did.
Q. And your lawyer acted for you?
A. I believe so; yes, sir.
Q. Did you take any part in it yourself?
A. I left that to my husband and the lawyer. My husband was my agent and Mr. Bisbee was the attorney.
Q. Were the funds placed in your hands?
A. They were.
Q. Did you keep any bank account while the Phœnix grain and stock exchange was in operation?
A. No, sir.
Q. Did your husband keep one, as far as you know?
A. He did not.
Q. Did you have any other agent but your husband in the management of these stock exchanges?
A. I did not.
59 Q. What was the business which the stock exchange transacted?
A. The buying and selling of stock, shares, &c.
Q. Who else besides you paid money into the company when it was organized?
A. Mr. Skakel and Mr. Campbell.
Q. Did Mr. Martin pay any money into the company?
A. Not to my knowledge; he had nothing to pay.
Q. At whose suggestion did you first conclude to go into that exchange business?
A. Well, at the suggestion of my husband.
Q. Was he engaged in business prior to the organization of the Phœnix grain and stock exchange? I mean immediately prior.
A. I think not. I couldn't answer that, but I think not.
Q. You think he was out of business just previous to the organization of this Phœnix grain and stock exchange?

A. Yes, sir.

Q. How long had he been out of business, to the best of your recollection?

A. Well, I couldn't say; I don't remember just how long he had been out of business.

Q. Had he been in business, to your knowledge, at all prior to the organization of this exchange?

A. Do you mean since we were married?

Q. Yes.

A. He was in business when we were married.

Q. In what business?

A. He was in the firm of Lawrence & Martin.

Q. Do you recollect when that firm suspended business?

A. I do; May, 1881.

Q. Was he in business after the suspension of that firm, previous to the organization of this exchange?

A. I believe he was; I don't remember how long.

60 Q. Well, do you remember that he was in business at all?

A. He was.

Q. After the suspension of Lawrence & Martin?

A. He was.

Q. What business?

A. I believe the firm continued for a short time to settle it up, and he acted as agent.

Q. That is, acting for the firm of Lawrence & Martin?

A. I don't know who he acted as agent for; it was very shortly after we were married, and I knew nothing about that.

Q. Well, after he ceased having anything to do with the business of Lawrence & Martin, either on his own account or for anybody else, was he engaged in any business prior to the organization of this exchange?

A. Not that I remember of.

Q. And how long was that, 2 years?

A. That was about 2 and a half years, I believe; he failed in May, 1881; that started in September, 1883.

Q. Where did you reside during the two years, more or less, after the suspension of Lawrence & Martin, prior to the organization of this exchange?

A. I resided on the West Side at the time of the suspension, at 195 Wood St. I moved from there to the South Side, on Oakwood boulevard; the number, I think, at the time was 752.

Q. And there continued to reside?

A. I resided there until I moved to 1350 Oakwood boulevard, about two blocks.

Q. And was that previous to the organization of the exchange that you moved there?

A. I was living at 195 Wood St. when it was first organized and I moved from there the next spring.

Q. When this stock exchange was organized what was the

61 condition of Mr. Martin's health; was he a healthy man?

A. He was.

Q. An able-bodied man?
A. He was.
Q. Able to attend to business and transact business?
A. Yes, sir.
Q. Had he been such since your marriage?
A. He had.
Q. And is still?
A. He is.
Q. About what age is Mr. Martin at present?
A. Mr. Martin is about 50 years old, I believe.
Q. Were you ever engaged in business prior to the organization of this exchange?
A. I was not.
Q. Your husband, you say, was connected with a firm of liquor dealers under the name of Lawrence & Martin when you were married?
A. He was.
Q. Do you know how long previous to your marriage your husband was in business as a merchant?
A. I do not.
Q. Have you been engaged since your marriage in any other business than the business of those exchanges, not including, of course, your farming matters?
A. I have not.
Q. Did you derive all the funds with which you made purchases of your real estate from your business in connection with those exchanges?
A. I did.
Q. Did you pay Mr. Skakel the money which you say you borrowed of him?
A. I did.
Q. Did you take up the note which you had given?
A. I paid him the cash.
Q. You had given a note, I understood you, for that money?
A. I believe I had; yes, sir.
Q. Did you take it up?
A. I did.
Q. Have you it?
A. I think I have it, not here.

62 Q. Did you have representing you or in your employ in connection with those exchanges any other person than your husband?

A. My husband acted as my agent in those.
Q. You had no other agent?
A. I had not.
Q. Did you have counsel, legal counsel?
A. I had; I had Mr. Bisbee.
Q. Did you consult your legal counsel when you subscribed for the stock?
A. I did.
Q. Did you husband also consult him with you?

A. He did, I think.

Q. Who was managing the exchange at the time you disposed of your stock?

A. My brother and Mr. Skakel, I believe.

Q. Had the business of the exchange materially lessened?

A. It had.

Q. Was your husband then connected with it?

A. He was; acting as my agent.

Q. At that time?

A. At that time.

Q. When you disposed of your stock?

A. He was.

Q. And up till the time that you made that disposition?

A. Yes, sir.

Q. Did he have any connection with that agency after you disposed of your stock?

A. Not to my knowledge.

Q. What business is your husband now engaged in?

A. Well, he is managing the farms for me.

Q. Has he been in any other busines than your manager of those farms since he left or since you sold your stock in the exchange?

A. Not to my knowledge.

Q. You say your husband was employed by the companies?

A. Yes, sir.

Q. And was he paid by the companies?

A. He was paid by the company.

Q. Did you pay him anything yourself?

63 A. He was paid by the company the salary; I didn't pay him any certain salary.

Q. Did you pay him anything for acting as your agent?

A. Not any stated salary.

Q. What did you pay him for acting for your interests, as your agent?

A. I didn't pay him any salary; we lived, and I don't know that he gets any salary.

Q. I am referring now to the time past, when he was in the company.

A. No, sir; I didn't pay him any salary.

Q. You didn't pay him any salary during the time you was connected with those exchanges?

A. Not individually; he was paid by the company.

Q. Did you pay him any renumeration for acting as your agent and looking after your interests while you was connected with those exchanges?

A. No, sir.

Q. Do you pay him now for acting as your manager in Lake county?

A. It is voluntary on his part.

Q. What does he get from you as a consideration for all this management on his part?

A. Well, I don't give him any salary.

Q. Who carries the pocket-book of the farms?

A. I carry the pocket-book usually, or at least I always settle for anything that is purchased.

Q. Well, if you pay Mr. Martin nothing and he is in no business except as your manager, how does he meet his personal expenses?

A. When he needs any money I give it to him; he has no salary set.

Q. Is there any agreement between you and him respecting the management of the farm?

A. He is to manage it to the best of his ability; there is no other agreement; he is just to manage it the best he can for my interests.

Q. Was that an agreement made between you?

64 A. There never was any agreement drawn up; no, sir.

Q. It was simply——

A. It was simply—we have talked it over and we have talked about how we should get along.

Q. And that he should be manager?

A. Yes, sir.

Q. And of course you understood that if he was manager he would do the best he could?

A. Certainly; he is my husband, and he told me he would.

Q. Was that about the same arrangement when he was your manager in the exchanges?

A. Yes, sir.

Q. And when he was a manager in the exchanges did you then furnish him with any money?

A. Then he drew a salary of $30 a week.

Q. But did you furnish him with any money?

A. Not that I remember of now; no, sir.

Q. Did you invest any of the funds which you derived from the stock exchange?

A. I did. I purchased the farms with the money.

Q. Did you invest them in any other enterprise previous to purchasing the farms?

A. I did. I bought city property previous to the farms.

Q. Did you invest in any other way?

A. I did not.

Q. Did you make purchases of stock yourself?

A. I subscribed for the stock. I made no other purchase.

Q. I mean of other stocks.

A. No, sir.

Q. You didn't go into the market and trade with your money?

A. No, sir.

Q. You didn't loan money?

A. No, sir.

Q. Did you keep your funds that you made from the stock exchanges in those exchanges as a part of its working capital?

A. I did.

65 Q. Then you drew from time to time from your dividends simply what you wanted to use?

A. I did.

Q. And left the rest to accumulate?

A. And left the rest to accumulate.

Q. When did you draw the accumulation out—when you made these purchases?

A. I did.

Q. Had your husband, previous to your purchasing those farms, ever been engaged in the farming business?

A. Not to my knowledge; no, sir.

Q. Did you employ any other overseer or manager of the farms except Mr. Martin?

A. I employed such help as was needed to run the farm.

Q. Were you ever experienced in farming matters yourself?

A. No, sir.

Q. You never lived on a farm till you bought these?

A. I never had.

Q. You had lived in the village or city of Terre Haute?

A. Yes, sir.

Q. Mrs. Martin, will you now produce the deed of the Oakwood Boulevard property before the commissioner?

A. Certainly.

(Deed produced by the witness.)

By agreement of counsel description of the deed may be entered and no exhibit made.

By Mr. WESTOVER: I offer this deed in evidence and will read to the reporter the description of the property, which is as follows: The deed is dated at Chicago March 17th, 1885, signed by William T. McKeever, widower, and for the consideration of $11,500 "conveys and warrants to Carrie E. Martin, of the village of Hyde Park, county of Cook and State of Illinois, the following-described real estate: The east half of the east half lot four (4), in county
66 clerk's division of part of lots one (1), two (2), eight (8), and nine (9), in Cleaverville addition, being the subdivision of that part of the north half of the northeast quarter of section three, township thirty-eight (38) north, range fourteen (14) east, of the third principal meridian lying east of the Vincennes road, subject to a trust deed executed by said grantor to Frank R. Chandler, dated June 13th, 1884, and recorded June 16th, 1884, in the recorder's office of said Cook county, securing an indebtedness of $5,000, and also subject to an encumbrance of $2,100 due on or before August 28th, 1886, which said encumbrance said Carrie E. Martin hereby assumes and agrees to pay."

Q. You stated, Mrs. Martin, in your examination, that you paid $10,500. Why does this deed recite that you paid $11,500?

A. The house next to us had sold for that amount, and he asked us as a favor that he could put the $11,500 in that it might not appear that he sold his house for less than the next one to it.

By Mr. WESTOVER: I will read *the* evidence the endorsement of record of this deed: Recorded in the recorder's office of Cook county March 21st, 1885, at 12 o'clock m, in Book 1623 of Records, on page 45.

Q. Will you produce the deed to you of the farm called the Spring farm?

A. Yes, sir.

(Deed produced and offered in evidence to identify the description of the property.)

Here are produced and offered in evidence five separate deeds, by which it is conceded by counsel that the witness acquired
67 title to the Spring farm, the description of the farm as recited in said deeds being as follows:

Premises situated in the county of Lake and State of Illinois and described as follows, to wit:

The south half of the southeast quarter of section number twenty-eight (28) and the northeast quarter of section number thirty-three (33), and that part of said section number 33 which is described as follows:

Beginning at the northeast corner of said section number 33 and running thence south 45 degrees west 28 chains and 30 links to the southwest corner of the northeast quarter of the northeast quarter of said section number 33, thence north 20 chains to the northwest corner of the said northeast quarter of the northeast quarter aforesaid of said section number 33, and thence east 20 chains to the place of beginning, being the northwest half of said quarter of quarter section, all of said lands and premises being in township number 46 north, of range number 10 east, of the third principal meridian and containing 140 acres, more or less. Said deed was recorded October 17th, 1885, at 4.35 o'clock p. m., in volume 86 of Deeds, page 35, recorder's office, Lake county, Illinois.

Q. Will you please produce the deed of the Emmett farm that we may have the description of it?

A. Yes, sir.

(Deed produced by witness and offered in evidence.)

Deed is from Catharine Emmett and William Emmett to
68 Carrie E. Martin, dated October 31st, 1885, and conveys the following-described premises in the county of Lake and State of Illinois:

The east two-thirds of the west half of the southwest quarter of section number 35, in township number 46 north, of range number 10 east, of the third principal meridian; also commencing 29 rods east of the northwest corner of the northwest quarter of section number 2, in township number 45 north, of range number 10 east, of the third principal meridian, and running thence south 40 rods, thence west 45 rods, thence south 40 rods, thence east 45 degrees north to a point 24 rods south of the northeast corner of the west half of the northwest quarter of said section number 2, in township and range last mentioned, thence north 24 rods to the place of beginning, reserving from the last-mentioned piece or tract of land ¼ of an acre, deeded by Peter Luther to certain persons for a schoolhouse lot, said premises, however, being conveyed hereby subject to a certain mortgage on the same made by the said party of the first

part to Russell G. Woodward, dated July 10th, 1882, and recorded in Book 79 of Mortgaged, on page 55. The note of $1,250 mentioned in said mortgage having been paid to the said party of the second part as part of the consideration of this deed — covenants and agrees to and with the said party of the first part that he will pay the other note mentioned in and described by said mortgage, with the interest accrued thereon since July 10th, 1885.

This deed was recorded in the recorder's office of Lake
69 county October 31st, 1885, at 5.15 o'clock p. m., in volume 60 of Deeds, on page 328.

Q. Mrs. Martin, will you produce the bill of sale, if you have one, conveying to you the personal property that you purchased with the Emmett farm?

A. I will; certainly.

(The same is produced.)

By Mr. WESTOVER: I will offer the bill of sale in evidence, it being agreed by counsel that rather than have it attached as an exhibit it may be copied into the record. It is as follows:

Know all men by these presents that we, Catherine Emmett and William Emmett, husband and wife, of the town of Avon, in the county of Lake and State of Illinois, in consideration of the sum of nine thousand six hundred and fifty dollars to us paid by Carrie E. Martin, of the city of Chicago, in the county of Cook, in the State of Illinois, do hereby sell and convey to the said Carrie E. Martin the following-described goods and chattels:

One brown Hamiltonian stallion, "Enterprise," eight years of age, sixteen and one-half hands high, weight about 1,100, sired by "Enfield;" 1 brown stallion, "Gen. Putnam," sixteen and one-half hands high, weight 1,200 pounds, three years of age, bred by Wm. D. Ham, of Hennepin, Illinois, sired by "King Membrino;" 1 pair large draft mares, one of which sired by "Border Chief," and is named "Kitty," and is 8 years old, the other sired by an imported horse of Canada, is named "Topsy," is eight years old; 1 chestnut gelding, 10 years old, fifteen and one-half hands high, sired by "Knight Hawk," and known as "Sorrel Dan;"
70 one (1) bay mare, with white blaze in her face, 13 years old, purchased of Mr. Hook, of Lake county, Illinois, and known as the "Hook mare;" 8 Dutch belted milk cows, 2 Dutch belted heifers, 3 Dutch belted bulls, one of which is 4 years old, one yearling, and one six months old; 4 belted calves, 1 jet black calf, all of said cattle known as "Emmett's Dutch belted herd of cattle;" 1 two-seated top carriage, 1 canopy top carriage, 1 doctor's pheaton, 1 skeleton buckboard, 1 Brewster side bar, top pole and shafts; 1 three-seated delivery wagon, 1 farm wagon, 1 set farm trucks, 4 wagon boxes for farm use for said wagons, all painted white and green; 1 road scraper, 1 sulky plow, 1 large feed-cut-er, 1 breaking cart, 2 sets double harness, 1 set double carriage harness, made by Tailor, of Chicago; 1 set very light double road harness, made by Tailor, of Chicago; 3 sets single harness, 15 horse blankets, 3 hoods,

6 horse sheets, 3 curry combs, 2 sets hobbles, 2 dozen hitch straps, 4 horse brushes, and all other stable utensils, such as buckets, brooms, &c., and all other articles of personal property in and about the barns and yards of the Sand Lake farm hereinafter more particularly described; also 5 row-boats, made by Powell & Douglas, of Waukegan, Lake Co., Ills., all of which are now situated in and about Sand Lake; 8 bedsteads, bed and bedding; also all the carpets and carpeting, being known as Brussels carpet, consisting of about 215 yards; 1 parlor set of black walnut, wood-work trimmed with plush; 2 parlor stoves, 1 kitchen range and all appliances for same; also all other household cooking and kitchen utensils and all sideboards, dressing cases, washstands, chinaware, glassware,
71 silverware, pictures, picture frames, and all other articles of value contained in the dwelling-house situated on the Sand Lake farm, in the town of Avon, in Lake county, Illinois, which said Sand Lake farm is described as follows, to wit:

The east two-thirds ($\frac{2}{3}$) of the west half of the southwest quarter of section number thirty-five (35), in township number forty-six (46) north, of range number ten (10) east, of the third principal meridian.

Also commencing twenty-nine (29) rods east of the northwest corner of the northwest quarter of section number two (2), in township number forty-five (45) north, of range number ten (10) east, of the third principal meridian, and running thence south forty (40) rods, thence west five (5) rods, thence south forty (40) rods, thence east forty-five (45) degrees north to a point twenty-four (24) rods south of the northeast corner of the west half of the northwest quarter of said section number two (2), township and range last aforesaid mentioned, thence north twenty-four (24) rods, and thence west fifty-one (51) rods to the place of beginning, reserving from the last-mentioned tract or piece of land one-fourth of an acre deeded by Peter Luther to certain persons for a school-house lot.

Witness our hands and seals this thirty-first day of October, A. D. 1885.

CATHERINE EMMETT. [SEAL.]
WM. EMMETT. [SEAL.]

72 STATE OF ILLINOIS, } ss:
Lake County, }

I, Francis E. Clarke, a notary public in and for said county, in the State aforesaid, do hereby certify that Catherine Emmett and William Emmett, husband and wife, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they executed and delivered the said instrument as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 31st day of October, A. D. 1885.

[NOTARIAL SEAL.] FRANCIS E. CLARKE,
Notary Public.

Endorsed on the back:

"This instrument was filed for record on the 31st day of October, A. D. 1885, at 5.15 o'clock p. m., and duly recorded in vol. 80 of Mortgages, page- 382 & 383. Chas. Phillips, clerk of circuit court and *ex officio* recorder."

Q. Mrs. Martin, will you also produce the deed of the premises which you purchased of A. S. Trude, called the Trude farm?

A. I will.

(Deed produced.)

By Mr. WESTOVER: I offer that deed in evidence, which deed is dated the 20th day of September, 1886, recorded in the recorder's office of Lake county, Illinois, on the 25th day of September, 1886, in Book 84 of Deeds, on page 227 and is as follows:

73 This indenture witnesseth that the grantor-, Alfred S. Trude and Algenia D. Trude, his wife, of the city of Chicago, in the county of Cook and State of Illinois, for and in consideration of the sum of forty-four hundred dollars in hand paid, convey and warrant to Carrie E. Martin, of the county of Lake and State of Illinois, the following-described real estate, to wit: The east half of the northwest quarter and the northeast quarter of southwest quarter of section number thirty-five (35), in township number forty-six (46) north, of range number ten (10) east, of the third principal meridian, containing one hundred and twenty (120) acres, more or less.

Also part of the southeast quarter of the southwest quarter of section number twenty-six (26), in the township and range aforesaid, described as follows:

Commencing at the southeast corner of said quarter section and running thence west thirty-seven (37) rods; thence north to the centre of the Waukegan road (so called); thence southeasterly along the center of said road to the east line of said quarter section; thence south to the place of beginning, containing one and one-half acres, more or less, situated in the county of Lake, in the State of Illinois, hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of this State.

Dated this 20th day of September, A. D. 1886.

ALFRED S. TRUDE. [SEAL.]
ALGENIA D. TRUDE. [SEAL.]

74 STATE OF ILLINOIS, } ss:
County of Cook, }

I, John Graham, a notary public in and for said county, in the State aforesaid, do hereby certify that Alfred S. Trude and Algenia D. Trude, his wife, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument as their free and voluntary act for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal this 21st day of September, A. D. 1886.

[NOTARIAL SEAL.] JOHN GRAHAM,
Notary Public.

Q. Where did you obtain the money, Mrs. Martin, with which you paid Mr. Skakel that which you borrowed of him?

A. From the profit of the company.

Q. You have already stated that you were not engaged in any other business?

A. Yes, sir.

Q. Were you engaged in any other occupation by which you made money for yourself?

A. I was not.

Q. What were your duties—what were you engaged in during the time that you owned this stock in the exchanges?

A. Looking after my household affairs and my family.

Q. You were keeping house?

A. Yes, sir.

Q. Was your family then the same as it is now?

75 A. It was the same while I lived in the city. My brother lived with us. His business was not such that he could——

Q. The same brother that was engaged in the exchanges?

A. The same brother.

Q. Do you know what salary was paid your husband by the exchanges?

A. $30 a week.

Q. Do you know what was paid your brother?

A. I do not; I don't remember it now.

76 OCTOBER 10TH, 1888.

MORRIS T. MARTIN, being first duly sworn, testified on behalf of complainants as follows:

Direct examination by Mr. WESTOVER:

Q. What is your full name?

A. Morris T. Martin.

Q. How long were you engaged in the business of Lawrence & Martin?

A. Well, between 6 and 7 years; I couldn't tell exactly.

Q. Before that what had been your business?

A. I had been interested in what is known to the intelligent class of Chicago as a gambling-house.

Q. Were you ever engaged in the farming business previous to that?

A. Never worked on a farm; not late years. I was born on a farm and lived there till I was old enough to go out and make a living for myself.

Q. How old was that?

A. I reckon I was about 11 years old; somewhere in that neighborhood. I haven't kept a diary of my life exactly.

Q. Were you ever engaged in the business of a stock broker or dealer prior to the organization of the Phœnix stock exchange?

A. Yes.

Q. Where?

A. In Chicago.

Q. What was it?

A. It was known as the produce exchange. Those places are better known as bucket shops. It was the first bucket shop that ever was in Chicago.

Q. Where was that located?

A. It was located in the building that used to be called the Toledo; don't remember the number now; it was on Madison street near the Brevoort house. It used to be called the Toledo. There was a sort of a theatre in there one time, and Mr. Foley
77 has had a billiard-room in there since, I think.

Q. Was the Phœnix grain and stock exchange also a bucket shop?

A. Well, you could call it that. It was.

Q. What would be generally designated as such?

A. It is generally what would be called a bucket shop—grain and stock exchange—where they deal in grain, provision-, and stocks.

Q. Are there any such exchanges now doing business in Chicago that you know of?

A. Yes.

Q. Are you interested in any such business now?

A. Not at present; no, sir.

Q. How long were you in the bucket-shop business prior to the organization of this Phœnix grain and stock exchange?

A. I think about 2 months.

Q. Did you retire from that business when this Phœnix grain and stock exchange——

A. That business was in the name of Lawrence & Martin. It was done during the time that we were in the wholesale whisky business.

Q. Did you close that business when you suspended your mercantile business?

A. That business was closed long before—that is, we sold it out to another party long before the failure.

Q. Since the organization of the Phœnix grain and stock exchange have you been in any business?

A. Nothing farther than that business—acting as agent there for my wife and for the concern part of the time—and that is all the business I have had except superintending farms.

78 Q. Were you the general manager of those bucket shops, the Phœnix and the New York?

A. I was the manager of that one for a time, yes—the Phœnix.

Q. And also the New York, which succeeded it?

A. Yes; I was there awhile as manager.

Q. Have you been engaged in any business since your family removed to the Lake county farm except that of superintendent and manager of these farms?

A. Nothing else.

Q. Where is Mr. Lawrence?

A. Well, now, that is a long question. I couldn't tell you. He is so far away I couldn't begin to tell you where he is. I know no more about him than you do. Mr. Lawrence is one of the things of the past with me.

Q. Do you know what business he is in now?

A. I do not, sir. I don't know where he is. He was in Liverpool for a time. I understood that he had gone back to England. He was formerly from England. He was an Englishman, and I understood that he had went home. That is all I know about him. I haven't seen him in 3 or 4 years, and I don't care to see him either.

Q. You haven't in the last 3 or 4 years been saving and accumulating any funds for your own particular use, have you?

A. No, sir; I have not, any further that what we received in the business from my work as her agent. She appreciates what I have done for her, I guess, pretty well; anyhow she lets me put on a clean shirt once a week—very kind.

Q. Lets you have such funds as you need to buy the clean shirt?

A. If there is a circus in town and I want to go she gives me a half a dollar to go to that.

Q. Are those farms worth as much as Mrs. Martin has
79 testified that they cost her?

A. Yes; they are worth a great deal more to-day, I think.

Q. How much are they worth to-day?

A. The stock and farms up there are worth $50,000, I guess.

Q. What is the nearest town of any importance?

A. Lake Villa. It is a town that Lehman is building there on the Wisconsin Central railroad.

Q. On a little lake?

A. Yes; between Cedar and Deep lakes.

Q. How far from this Lake Villa is the residence?

A. Well, where we live?

Q. Yes.

A. About a mile and a half, I should think.

Adjourned subject to call of counsel.

Signatures of witnesses waived by stipulation of counsel.

E. B. SHERMAN, *Master.*

80 FEBRUARY 13TH, 1889.

Examination resumed pursuant to agreement.

Counsel present as before.

Testimony on Behalf of Defendants.

CARRIE E. MARTIN, being first duly sworn, testified on behalf of defendants as follows:

Direct examination by Mr. BISBEE:

Q. Mrs. Martin, about how much money have you put into all the property in Lake county, personal and real?

A. I think I have put in between $25,000 and $30,000.

Q. What, in your opinion, is all that property worth?

A. Well, I don't know what it is worth; I have never had an offer; have never tried to dispose of it. I don't suppose if it was sold now that it would bring any more than I have put in there.

Q. Do you reside on that property now?

A. I do not.

Q. Where do you reside?

A. I am living at Park Manor since November.

Q. November last?

A. November last.

Q. And have you any agent looking after that property in Lake county?

A. I have.

Q. Who?

A. I have a man there by the name of Kennedy——

Q. Where does he live?

A. —living there in the house where we lived and superintending the farm.

Cross-examination by Mr. WESTOVER:

Q. Where is Park Manor?

A. Park Manor lies a little south of Englewood—the next station to Englewood.

81 Q. Your family now resides there?

A. They do.

Q. Are you engaged in any business now?

A. No business except we still have the farms.

Q. Is your husband engaged in any business now?

A. Mr. Martin has not been very well since we have been in the city, but lately has been in the office with Wolfe & Company.

Q. Where is that?

A. 130 Van Buren street.

Q. What is the business?

A. Grain and stock exchange.

Q. Is it similar to the produce exchange in which you were a member, as you formerly testified?

A. It is.

82 MORRIS T. MARTIN, being first duly sworn, testified on behalf of defendants as follows:

Direct examination by Mr. BISBEE:

Q. When you were called as a witness on behalf of the complainants, in September last, you testified that "the stock and farms up there (meaning in Lake county) are worth $50,000." State what you mean by that expression.

A. Well, I don't know but that if the farm was put up at a forced sale—I don't suppose you could sell them readily for that, but you might find some person that wanted a fancy thing that would give

that price; that is what I meant, you know. It is more of a place of pleasure and for a man of that kind than it would be for a—be business and pleasure combined, you know; that is what I meant; might be people that would give that for it; never had an offer for it, anything of that kind.

Q. What is your opinion now in relation to the value, the market value, of that property, as to the amount it cost Mrs. Martin, whether it could be sold for any more than it cost?

A. Just at present I don't think it could. I don't know where I would go to sell it.

Q. Have you ever had any experience in farming?

A. Very little; very little, sir.

Q. Well, do you know anything about farming or skilled in that department?

A. I don't think I would be capable to go on and take charge of a farm and run it and make a success of it.

83 Cross-examination by Mr. WESTOVER:

Q. Is there about the same personal property on there now that was there when you were examined before?

A. Yes, sir; just the same.

Q. Same stock there?

A. Just about the same; one or two horses died out there, I believe, since then.

Q. Do you or does Mrs. Martin own the place where you now reside?

A. Mrs. Martin owns it.

Q. Have you gone to Park Manor with the intention of making that your permanent residence?

A. Well, that is very hard to answer. I don't know.

Q. Have you any plans in contemplation about returning at a future time to the farm?

A. No, sir; not at present.

Q. Have you changed your mind since your last examination as to the value of the farm?

A. Well, no, not particularly, any further than I say that if it was put up at a forced sale it would be hard to realize the money that has been put in there, I think.

Q. The farm, you say, is of a peculiar kind in one respect—that is to say, it is not such a farm as is ordinarily a marketable farm for grain-raising and crops?

A. Good land; good as any other land in the county, I guess.

Q. What do you mean?

A. Well, it is on three lakes; 2 lakes on this farm; one is Hastings lake, as I said before, and the other end is Sand lake, and is sort of a fancy place—that is what I mean—for a man like Vanderbuilt—man like that; if you happen to get a man out
84 there that took a fancy to it they might buy it and pay you most any price for it, if they wanted it.

Q. Then when you used the term in your direct examination of

fancy place you mean as to its location, in consideration of the beautiful waters and the neighborhood?

A. Yes; and it is close to Chicago and all that sort of thing. Man could do business and live out there if he wanted to; trains run regularly.

Q. Are there lands or places in that neighborhood that are now used only by gentlemen of wealth and leisure for resorts?

A. No, sir; the only man that I know of of any particular sort of wealth out there is Lehman. He is building a town there—town of Lake Villa—that is, where Lehman is building a suburban town.

Q. You mean Lehman the wealthy merchant of Chicago?

A. Yes; E. J. Lehman. He is the only one.

Q. Sort of a summer resort, is it?

A. Yes; he has got a summer hotel there.

Q. In your present business do you own an interest in it, or does Mrs. Martin own an interest in it?

A. No, sir; not at all.

Q. You are simply employed?

A. That is all.

Q. What is the name of the firm by whom you are employed?

A. Wolfe & Company.

Signatures of witnesses waived.

Defendants rest.

85 Circuit Court of the United States, Northern District of Illinois.

SAMUEL F. ENGS *et al.*
vs.
MORRIS T. MARTIN *et al.*

The defendants admit that judgment was rendered in favor of complainants, as stated in the bill of complaint, against the defendant Morris T. Martin, with one Henry C. Lawrence, in the superior court of Cook county, Illinois, on the 4th day of December, 1882, for nine thousand seven hundred sixty and $\frac{34}{100}$ dollars; that execution was issued on said judgment and was returned wholly unsatisfied before the bill of complaint herein was filed, and said judgment remains wholly unpaid.

BISBEE, AHRENS & DECKER,
Att'ys for Def'ts.

MORRIS T. MARTIN &
CARRIE E. MARTIN.

86 In the Circuit Court of the United States for the Northern District of Illinois.

SAMUEL F. ENGS *et al.*
vs.
MORRIS T. MARTIN *et al.* } In Chancery.

I, E. B. Sherman, master in chancery of said court, to whom, by an order entered therein on the 6th day of March, 1888, the above-entitled cause was referred to take proofs therein and report the same to the court, respectfully reports that said cause was set for hearing for the purposes in said order of reference specified on the 28th day of September, 1888; that testimony was taken on that day and from time to time thereafter, as shown by the foregoing record thereof, which is hereto attached; that the foregoing is all the testimony offered on behalf of either of said parties.

Respectfully submitted.

E. B. SHERMAN,
Master in Chancery of said Court.

Chicago, February 13th, 1889.

(Endorsed:) Filed this 13th day of Feb'y, 1889. Wm. H. Bradley, clerk.

87 Which was all of the evidence offered upon the hearing of said cause.

And inasmuch as the matters above set forth do not fully appear of record in this suit, the defendants tender this certificate of evidence and pray that the same may be certified under the hand and seal of the judge of this court, and thereby made a part of the record in said cause, and it is certified accordingly this 27th day of July, A. D. 1889.

H. W. BLODGETT, *Dist. Judge.* [SEAL.]

(Endorsed:) Filed July 27, 1889. Wm. H. Bradley, clerk.

88 Afterwards, to wit, on the thirty-first day of July, 1889, there was filed in said clerk's office an appeal bond in said entitled cause; which said bond is in the words and figures following, to wit:

In the Supreme Court of the United States.

MORRIS T. MARTIN and CARRIE E. MARTIN, Appellants and Defendants Below,
vs.
HENRY SNYDER, JR., Surviving Partner of the Firm of P. W. Engs and Sons, Composed of Samuel F. Engs, George Engs, and Henry Snyder, Jr., Appellees and Complainants Below.

Know all men by these presents that we, Morris T. Martin, Carrie E. Martin, and James J. Gore, are held and firmly bound unto Henry Snyder, Jr., surviving partner of the firm of P. W. Engs &

Sons, composed of Samuel F. Engs, George Engs, and Henry Snyder, Jr., in the full and just sum of fifteen hundred dollars, to be paid to the said Henry Snyder, Jr., surviving partner of the firm of P. W. Engs & Sons, composed of Samuel F. Engs, George Engs, and Henry Snyder, Jr., his executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 29th day of July, A. D. 1889.

Whereas the above-named Morris T. Martin and Carrie E. Martin have taken an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the
89 circuit court of the United States for the northern district of Illinois, in favor of the said complainant, Henry Snyder, Jr., surviving partner of the firm of P. W. Engs & Sons, composed of Samuel F. Engs, George Engs, and Henry Snyder, Jr., and against the said defendants, Morris T. Martin and Carrie E. Martin, for the sum of nine thousand seven hundred and sixty dollars and thirty-four cents, with interest thereon from the 4th day of December, A. D. 1882, and costs, and for the sale of certain real estate for the payment of the amount of said decree and costs:

Now, therefore, the condition of the above obligation is such that if the said Morris T. Martin and Carrie E. Martin shall prosecute their said appeal to effect and answer and pay all damages and costs that have been or shall hereafter be awarded against them in said suit if they shall fail to make good their said appeal and plea and said decree shall be affirmed, then the above obligation to be void; otherwise to remain in full force and virtue.

MORRIS T. MARTIN. [SEAL.]
CARRIE E. MARTIN. [SEAL.]
JAMES J. GORE. [SEAL.]

Approved:
W. Q. GRESHAM, *Circ't Judge.*

July 31, 1889.

Endorsed: Filed July 31, 1889. Wm. H. Bradley, clerk.

90 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the record of all the proceedings had in said court in the cause wherein Henry Snyder, Jr., surviving partner of the firm of P. W. Engs and Sons, composed of Samuel F. Engs, George Engs, and Henry Snyder, Jr., is complainant and Morris T. Martin and Carrie E. Martin are defendants as the same appear from the records and files of said court now remaining in my custody and control.

Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said district, northern division, this twelfth day of September, 1889.

WM. H. BRADLEY, *Clerk.*

91 In the Supreme Court of the United States, to the October Term, A. D. 1889.

MORRIS T. MARTIN and CARRIE E. MARTIN, Appellants,
vs.
HENRY SNYDER, JR., Surviving Partner of the Firm of P. W. Engs & Sons, Composed of Samuel F. Engs, George Engs, and Henry Snyder, Jr., Appellee.

Appeal from the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

And now come the above-named appellants, by Lewis H. Bisbee, John P. Ahrens, and Henry Decker, their solicitors, and say that in the record and proceedings aforesaid of the circuit court aforesaid there is manifest error in this, to wit:

1. The decree of said circuit court is erroneous in that it contains no findings of facts.
2. Said decree is erroneous in that there was and is no evidence in said cause to support said decree.
3. Said decree is contrary to the evidence in the case.
4. Said decree is contrary to the law in the case.
5. Said decree is contrary to the law and the evidence in the case.
6. Said decree is contrary to equity.
7. The said circuit court erred in granting the complainant below any relief whatsoever.

92 8. The said circuit court erred in not dismissing the bill of complaint filed in said cause for want of equity.

By reason whereof and for divers other errors manifest upon the face of said record and proceedings said appellants pray that said decree of said circuit court may be reversed, &c.

L. H. BISBEE,
JOHN P. AHRENS,
HENRY DECKER,
Appellants' Solicitors.

Endorsed on cover: Case No. 13,706. N. Illinois C. C. U. S. No. 131. Morris T. Martin and Carrie E. Martin, appellants, *vs.* Henry Snyder, Jr., surviving partner of the firm of P. W. Engs & Sons. Filed October 7, 1889.

148 U.S. 663

Office Supreme Court U. S.
FILED.
NOV 28 1892
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

MORRIS T. MARTIN and CARRIE E. MARTIN,
Appellants,
vs.
HENRY SNYDER, Jr., Surviving Partner of the firm of P. W. Engs & Sons, Appellee.

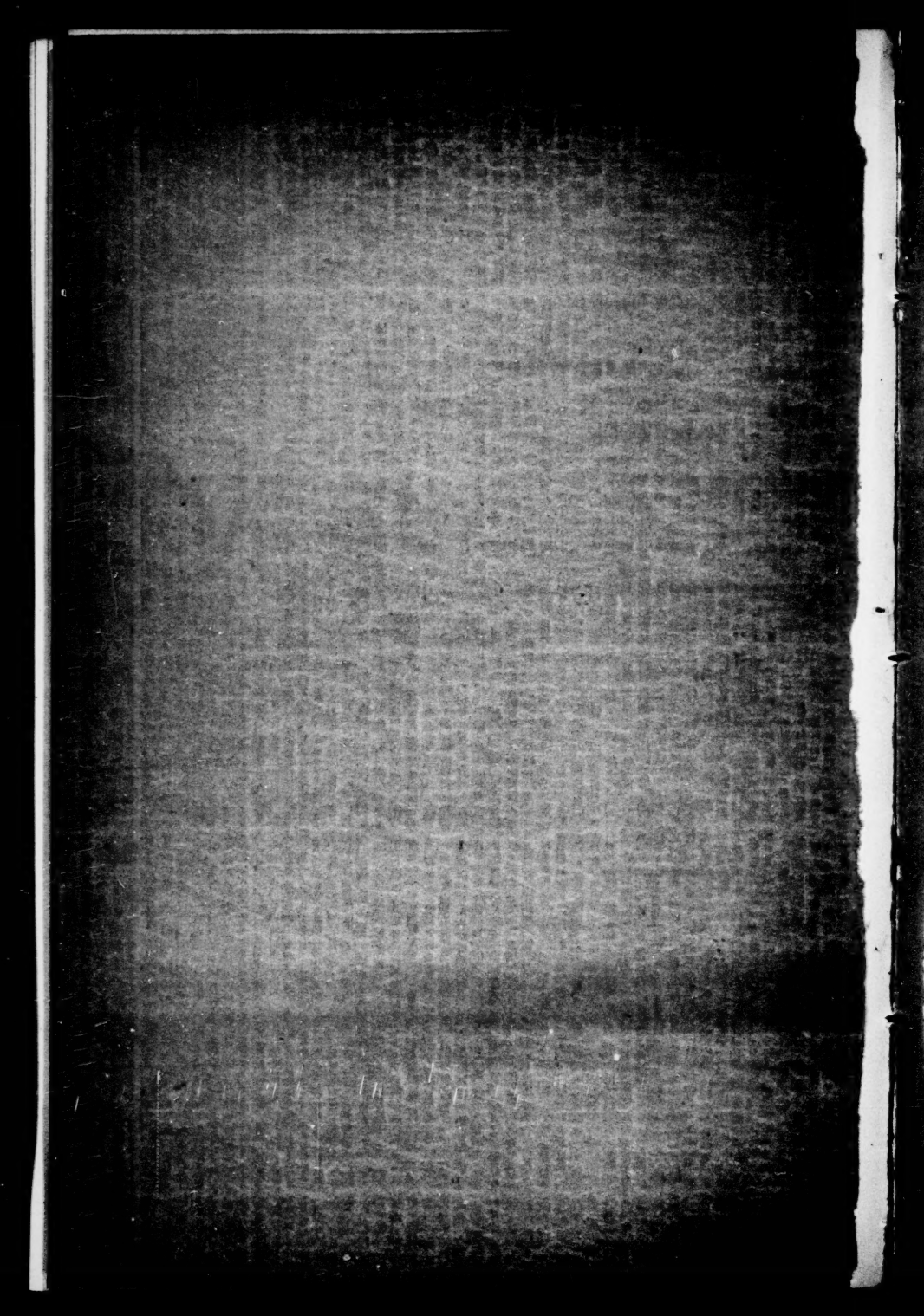
No. 131.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

BRIEF FOR APPELLANTS.

D. W. VOORHEES,
REESE H. VOORHEES,
For Appellants.

Press of McGILL & WALLACE, Washington, D. C.



ASSIGNMENT OF ERRORS.

1. The decree of said Circuit Court is erroneous in that it contains no findings of facts.

2. Said decree is erroneous in that there was and is no evidence in said cause to support said decree.

3. Said decree is contrary to the evidence in the case.

4. Said decree is contrary to the law in the case.

5. Said decree is contrary to the law and the evidence in the case.

6. Said decree is contrary to equity.

7. The said Circuit Court erred in granting the complainant below any relief whatsoever.

8. The said Circuit Court erred in not dismissing the bill of complaint filed in said cause for want of equity.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

MORRIS T. MARTIN and CARRIE E. MARTIN, Appellants,

vs.

HENRY SNYDER, Jr., surviving partner of the firm of P. W. Engs & Sons, Appellee.

No. 131.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

BRIEF ON BEHALF OF APPELLANTS.

Statement.

This case comes before the court on appeal from the United States Circuit Court for the Northern District of Illinois.

On the 27th day of October, 1887, Samuel Engs, George Engs, and Henry Snyder, Jr., of the State of New York, filed a bill of complaint in the Circuit Court of Lake County, Illinois, against Morris T. Martin and Carrie E. Martin of said State, appellants herein, alleging that complainants were judgment creditors of the said Morris T. Martin and one Henry C. Lawrence in the sum of $9,760.34; that execution had issued against the property

of the said Morris T. Martin and the said Henry C. Lawrence, which execution had been returned wholly unsatisfied, and that certain real property held in the name of the said Carrie E. Martin, wife of the said Morris T. Martin, was so held in fraud of their rights as creditors of the said Morris T. Martin, and praying that the said property be decreed to be held by the said Carrie E. Martin in trust for the said Morris T. Martin and themselves, the said creditors, and subject to their rights. (Record, p. 3.)

On November 9th, 1887, the State court granted appellant's petition for removal of the cause to the United States Circuit Court, and made an order of removal in accordance with the prayer therein. (Record, pp. 9, 10, 11, 12.)

On December 10th, 1887, appellants filed their answer, the oath thereto being waived by complainants, in the Federal Court, responsive to and in denial of the allegations of the bill of complaint. (Record, p. 13.)

Replication being made thereto, January 18th, 1888, the cause was referred to a master to take testimony. (Record, pp. 16, 17.)

On motion and affidavit, suggesting to the court the death of Samuel F. Engs and George Engs since the bringing of the action, by order of the court Henry Snyder, Jr., as surviving partner, was substituted as complainant in the said cause, April 23, 1889. (Record, pp. 19, 20.)

Testimony having been taken, by stipulation between the parties the said cause was submitted to the court below on pleadings, proofs, and briefs. (Record, p. 20.)

On July 27th, 1889, the court below entered its decree, holding the said property to be held in the name of the said Carrie E. Martin in fraud of the rights of the creditors of the said Morris T. Martin, and of the rights of the appellee as one of such creditors, and ordering the property sold to satisfy the said judgment in favor of Samuel

Engs, George Engs, and Henry Snyder, Jr. From such decree appellants took their appeal to this court.

No witnesses were examined by either party except Morris T. Martin and Carrie E. Martin, appellants, who were called as witnesses on behalf of the complainants, and were also examined on their own behalf.

The facts are these:

Morris T. Martin and Carrie E. Martin, the appellants, were married January 10, 1881. (Record, p. 25.) At that time Morris T. Martin was a member of the firm of Lawrence & Martin, wholesale liquor dealers, in Chicago. In May, 1881, the firm failed. (Record, p. 34.)

In September of 1883 a stock company was incorporated in Chicago for the purposes of a stock exchange, and was known as "The Phœnix Grain and Stock Exchange." (Record, pp. 29, 30.)

When this corporation was organized, Mrs. Carrie E. Martin, acting in her own right, borrowed herself, and upon her individual note, from one William Skakel between $500 and $600, and bought of the company just formed one-half of its stock. (Record, pp. 29, 30.) The stock was issued in her name and recorded on the books of the company in her name. (*Ibid.*, and p. 30.)

Her husband, Morris T. Martin, did not furnish one dollar of this purchase money, and did not have any money invested in the corporation (*Ibid.*, and p. 33), and had no money when the company was organized. (Record, p. 33).

Mrs. Carrie E. Martin herself repaid to William Skakel the money which she had borrowed and with which she had purchased the stock of the corporation, she having procured the money to make re-payment from dividends paid to her upon her stock. (Record, pp. 35, 45).

The husband, Morris T. Martin, was employed by the corporation as a manager of its business and was paid by

it $30 per week for his services. (Record, pp. 33, 35, 36, 37, 43.) The brother of Mrs. Martin was also employed in that capacity. (Record, p. 29.) The balance of the stock of the corporation was owned by William Skakel and a Mr. Campbell. (Record p. 29.)

The corporation subsequently changed its residence and its name, but Mrs. Martin retained the same interest in it. (Record, pp. 30, 31.)

This speculative investment by Mrs. Martin was very profitable, the returns being very large, and from the dividends which were paid to her upon her stock and from the proceeds of her stock, which she finally sold, she purchased the various pieces of real property in controversy in this case. (Record, p. 35).

This property consists of three farms, one stocked of 80 acres, for which Mrs. Martin paid $5,650; one of 121½, for which she paid $4,500, and one of 140 acres for which she paid $7,700; also a residence in Chicago, for which she paid $5,500 and assumed a mortgage of $5,000 not yet paid; also an equity in a suburban residence value at about $2,500. (Record, pp. 25, 26, 27).

All of this property was conveyed to Mrs. Martin and is in her name. (*Ib.*, and pp. 38, 39, 40, 41, 42.)

No money or other property belonging to the husband, or any money or property other than the profits and proceeds of the stock held by Mrs. Martin, aided in the purchase of this real property. (Record, pp. 35, 37.) Mr. Martin managed the real property as his wife's agent. (Record, p. 37.)

BRIEF.

I.

In view of the facts developed by the uncontradicted testimony in this case, and in view of the character of the decree below, which leaves it a matter of speculation as to the grounds on which it was based, it becomes

very pertinent to call special attention to the fact that the case was submitted to the court below without argument.

We insist that if the facts had been carefully analyzed, and had been clearly impressed upon the court below, the complainants must have failed of their decree.

The material facts in this case, which greatly simplify its consideration, and which we submit must reverse the decree below, are that—

The wife borrowed the money on her individual note and bought with it the corporation's stock from the profits and proceeds of which the real property was subsequently purchased by her, and she herself repaid the money so borrowed out of her dividends from the stock.

These facts are not directly or indirectly or circumstantially questioned by the proofs. The testimony proving them is positive, uncontradicted, and given by the complainant's own witness.

Here rests the case: Was this sum of money, borrowed by the wife upon her own note, after coming into her possession, liable for the debts of the husband? Is the stock of a corporation purchased by the wife with money owned by her, liable for the debts of the husband?

The wife had the right to borrow the money in her own name; it was hers when given into her possession. The stock she bought with it was hers, and every kind of property bought with the stock, the profits of the stock, or the proceeds of the stock was hers.

A married woman in the State of Illinois is stripped of all common-law disabilities in regard to the acquisition and possession of property and the husband has been stripped of all common-law rights in the wife's property, and she may own property, both personal and real, to the same extent and in the same manner that a man can own property of a similar character, and as owner of it, in relation to her husband, she is as though she were a man.

"A married woman may own in her own right, real and personal property obtained by descent, gift, or purchase, and manage, sell, and convey the same to the same extent and in the same manner that the husband can property belonging to him." (Ill. Revised Stats., 1881, sec. 9, chap. 68, p. 791.)

"A married woman may, in all cases, sue and be sued without joining her husband with her to the same extent as if she were unmarried, and an attachment or judgment in such actions may be enforced by or against her as if she were a single woman." (*Ibid.*, Sec. 1.)

"A husband or wife may constitute the other his or her attorney in fact, to control and dispose of his or her property for their mutual benefit or otherwise, and may revoke the same to the same extent and in the same manner as other persons." (*Ibid.*, Sec. 14.)

"Neither husband or wife shall be liable for the debts or liabilities of the other incurred before marriage, and (except as herein otherwise provided) they shall not be liable for the separate debts of each other, nor shall the wages, earnings, or property of either, nor the rent or income of such property, be liable for the separate debts of the other." (*Ibid.*, sec. 5.)

"Contracts may be made and liabilities incurred by a wife, and the same enforced against her, to the same extent and in the same manner as if she were unmarried." (*Ibid.*, sec. 6.)

"A married woman may receive, use, and possess her own earnings, and sue for the same in her own name, free from the interference of her husband or his creditors." (*Ibid.*, sec. 7.)

In regard to the modern status of the married woman in Illinois, the Supreme Court of that State, in Snell *v.* Snell (123 Ill., 403), said:

"By the acts of 1861, 1869, and 1874, married women are to-day, and were at the time of the execution of the mortgages in question, placed upon a common footing with married men in respect to all property rights, *including the means to acquire*, protect, and dispose of the same. They may own, buy, sell, transfer, and convey any and all kinds of property, to the same extent as married men

or single women may, and subject to no other or different conditions or restrictions. Not only so, but their duties and obligations in respect to these rights and powers are the same as those of others *sui juris*. Like other persons they must perform their contracts; and if they fail to do so, they are amenable to legal process to the same extent as if they were unmarried."

It therefore follows that where the property was purchased by the wife's money in her own name, it can not be made subject to the debts of the husband.

Davis *v.* Fredericks, 104 U. S., 618.

And it follows also that the fact that the wife had no estate, *but borrowed the money* to enable her to make the purchase, in no way changes the rule.

Muirhead *v.* Aldridge, 101 U. S., 397.

Dayton *v.* Walsh, 47 Wis., 113.

II.

The husband invested not a dollar of his money or any of his property in the stock, and by its purchase the creditors were not defrauded.

In the case of Citizens' Mut. Ins. Co. *v.* Foster, 64 Miss., 288, the facts were as follows:

One G. W. Foster was a member of two firms, both of which failed, and made an assignment of all assets to Peter Starke for the benefit of creditors. The assignment provided that the individual debts of the several partners should first be paid out of the individual assets of each. Starke appointed Foster to collect the assets. Foster collected a large amount, and with the proceeds bought a large hotel property and two fine plantations, taking deeds therefor in his own name. Subsequently he executed deeds of trust upon this property to his son, his sister, and his nephew to secure them certain debts he claimed to owe them. Starke, the assignee, filed a bill to have the deeds of trust cancelled and the property made subject to

the purposes of the assignment. Pending the litigation, Foster induced Starke to compromise, the agreement being that Foster's *wife* should pay stark $6,000 and costs, assume her husbands's individual debts, and that the legal title to the property should be conveyed to Foster's wife. A consent decree was entered to this effect in the proceeding instituted by Starke, and the property was conveyed to the wife, *and the wife borrowed the money with which to make the payment agreed upon between Starke and the husband.*

The Citizens' Mutual Insurance Company and other creditors filed a bill against Foster and others, alleging that the deeds of trust, the agreement of compromise, and the conveyance to Foster's wife were made in fraud of Foster's creditors, and asking that the property be made subject to Foster's debts.

In affirming the decree of the court below, which refused the relief sought, the Supreme Court of the State said:

"The sole purpose of its (complainant's) bill is to procure a decree affirming that the title acquired by the compromise was vested in Mrs. Foster in fraud of the rights of the creditors of her husband. If this be true, it is sufficient to support the bill; if it be not true, the complainant can not subject the property, no matter how great may have been the fraud practiced upon Starke.

"The deed of assignment passed whatever title G. W. Foster before that time had had in the assets which were invested in the lands, and though G. W. Foster had taken the title in his own name he held the same in trust for Starke, the assignee. It does not, therefore, appear that Mrs. Foster acquired anything save the bare legal title from G. W. Foster, and since his creditors could not have subjected that to the satisfaction of their debts, it was no fraud upon them that he conveyed it to his wife. The real vendor to Mrs. Foster was Starke, and, as we have said, it is not proposed to subject his title to sale by the present proceeding.

"The sole ground, therefore, on which the complainant can have the relief prayed is that G. W. Foster paid the purchase money to Starke, in consideration of which the conveyance was made to Mrs. Foster. This is the material fact to be established by the complainant to entitle it to relief. This fact is not proved, but is disproved by the testimony adduced.

"A part of the purchase money was paid out of the rents accruing on the lands conveyed by Starke. These rents did not belong to G. W. Foster, but to Starke, the assignee, and by the compromise passed to Mrs. Foster. This was, therefore, her money, and not G. W. Foster's. *Another portion of the money paid was advanced* by a brother of G. W. Foster to Mrs. Foster.

"Now, it is evident that the creditors of G. W. Foster never had any sort of right to subject this money to the payment of their claims. The lender was under no liability to pay these debts, and the creditors were not defrauded, and could not be by the fact that he loaned the sum to the wife of his insolvent brother. It may be that but for this insolvency G. W. Foster would himself have borrowed the money and would have taken the title to himself, but we know of no principle of law which gives to a creditor the benefit of a trade made by another but which would have been made by the debtor but for his insolvency."

Even where an intent is clearly shown in the husband to hinder and delay creditors, and even where the wife participated therein, nevertheless, if the wife supplied the purchase-money, and particularly if none of the husband's money went into the property, then the debtor's resources were not diverted from his creditors, and they were not injured. Fraudulent intent *and injury* must concur to afford judicial relief.

Clarke *v.* White, 12 Pet., 178.

In the case of McLean *v.* Hess (106 Ind., 555) the facts were these:

McLean, who was indebted to Daggy, agreed with Gibson to buy Gibson's mill for $1,600. Both McLean

and Gibson feared that if the property were transferred to McLean, Daggy would make it subject to his debt. To prevent this, McLean, Gibson, and McLean's wife agreed that the deed should be made to the latter. This was done, and McLean and wife joined in a note to Gibson for the purchase money. It was also agreed that the wife should execute a mortgage to Gibson to secure him, but having gotten the legal title she refused to do so. It was further agreed by McLean and wife that they would insure the property for Gibson, he to furnish the money, *but McLean and wife took out the policy in the wife's name and in her favor.*

The mill was run in the name of the husband and son. The mill burned. The purchase money had not been paid. The wife collected the insurance money, $1,700. McLean and wife refused to pay the insurance money to Gibson, but offered machinery which had been saved from the fire, valued at $600, in payment of the note. It was agreed that the machinery should be shipped to Indianapolis in *Gibson's* name and sold. McLean shipped it, however, in his own name. Daggy there had it attached by Sheriff Hess. The wife had the machinery replevied as her property. Daggy joined Hess and defended on the ground that the property had been conveyed to McLean's wife to defraud Daggy, McLean's creditor. After the machinery was shipped to Indianapolis, McLean's wife had paid to Gibson $950 of the insurance money, and her son had transferred to him a house and lot, the two being in satisfaction of the note.

The State Supreme Court upon these facts held that, however fraudulent the wife's intent was originally, the insurance money belonged to her, and that the house and lot belonged to the son, and, *therefore, none of the purchase money had been paid by the husband.* The court said:

"This being so, it is difficult to see how Mr. Daggy, or any other creditor of the husband, could or can be in-

jured by the conveyance to appellant, or by any fraudulent purpose therein."

That, where none of the debtor's money has gone into the property, it can not be held liable for his debts, is also held in the following cases:

Fulton *v.* Woodman, 54 Miss., 158;
Colgate's Executor *v.* Colgate, 23 N. J. Eq., 372;
Fornham *v.* Clements, 51 Maine, 426;
Leonard *v.* Barrett, 70 Ind., 367.

III.

The fact that Mrs. Martin's husband suggested this speculation to her, does not lessen her rights to the money which she borrowed for the purpose of acting on the suggestion, or lessen her right to any property in which she invested it. That she got the benefit of the suggestion and her husband's creditors did not, is not material. The fact remains that the purchase money was hers and the stock was hers. In the Mississippi case above quoted, the court said:

"Mr. Foster's abilities as a financier may be great (the Record shows them to be of no ordinary character) but creditors have no lien on them, and no right to complain that the debtor devotes them to the benefit of his wife."

IV.

It was urged below that the husband had devoted to his wife all of his earning capacity and future earnings, and that the profits on the stock were such earnings and that therefore his creditors were delayed, hindered, and defrauded.

If the profits and increased value of the stock owned by Mrs. Martin were caused by the labors of her husband and were liable for his debts on that account, then, on the same ground, would the profits and increased value of *all* of the stock of the corporation, no matter by whom

held, be liable for his debts, for it was all equally benefited by his labor, if any part was, and the wife, as an owner of the stock, held exactly the same relation to the husband that all other stockholders held, and his rights were as great in any other stockholder's stock as they were in the wife's.

But the Record does not show that Mr. Martin's efforts were the sole or the main cause of the corporation's success. Mrs. Martin's brother was also employed in a managerial capacity, and Mr. Skakel, one of the stockholders, also took part in the management. (Record, p. 36.)

Mr. Martin, prior to his connection with the Phœnix Company, had an experience in such business of only two months. (Record, p. 44.)

The Record *does* show, however, that Mr. Martin while employed by the company received a salary of $30 per week in payment of the benefits of his services.

He therefore did not, while the stock was increasing in value, injure his creditors by absorbing all of his earning capacity even in a property in which his wife had only a partial interest. His labor for himself while so employed yielded fair returns. Nor did the wife secure the benefits of his services, whatever they may have been, for nothing, since her stock paid out of the earnings its share of his salary.

We submit that, whatever effect Mr. Martin's efforts had upon the profits or the value of the stock, his wife was not called upon to procure his discharge from his employment and deprive him of his salary in order to protect her property from his creditors.

In view of the fact that Mr. Martin's services, whatever they may have been, were devoted to the betterment of several people, it is difficult to assume that his future earnings were devoted to his wife.

But assuming that the husband voluntarily devoted his services to the betterment of his wife's stock, to the

increase of her investment, and that largely through his agency the wife's stock finally yielded the money which she invested in the real property, we submit, under these circumstances, the husband acquired no right in the wife's property or the profits from it, and that neither property nor profits were liable for the husband's debts.

If the wife had induced a stranger to labor for her on her property voluntarily to its great betterment, the stranger would not have acquired an interest in it, nor would the fact that the stranger was in debt give him an interest which he otherwise would not have had.

Under the laws of Illinois the husband and wife, in regard to property owned by the latter, are as strangers.

There are two distinct interests to be considered, where under the old law, as to personal property, there was but the husband's, and practically also but his in regard to real property, since, if in the wife's name, the rents and profits were his.

We submit that the creditors in the case at bar are not entitled to a *first* lien on the debtor's future earning power.

If there was a *first* lien on the future earning power, the debtor could not secure employment, since whatever *profit* resulted from his services must go to the creditor and not to the employer. Nor would it alter the clear right of the employer to the profits if the debtor accepted the employment with the *intention* of diverting his earning power from the benefit of the creditor, nor would the amount of wages accepted, whether board wages or a salary, change the right of the employer. Nor, we submit, would it alter the employer's right if he sought the benefits of the debtor's services knowing that the debtor had creditors.

The debtor, not his creditors, is the judge of what he shall accept for his labor, and he may render it voluntarily if he so desires.

The debtor by such employment, either with his wife or a stranger, *lays up nothing for himself.*

The wife's right in regard to the acquisition of property in Illinois is as great as that of any stranger.

This question has been many times passed upon, both in Illinois and in other States havings laws more or less similar to those of that State, and also by this court in connection with such similar laws.

The general ruling and the reasoning in its support may be summarized in the language of Hunt., C., in the case of Abbey *v.* Deyo, 44 N. Y., 343. He said:

"In arguing this point the appellant's counsel insists that the services, the time and talents of the husband are valuable, and he has no more right to give them to his wife, as against his creditors than to give to her his property to their prejudice. The one, he says, is as much their property as the other. This argument is entirely unsound. The property of a debtor by the laws of all commercial countries belongs to his creditors. He must be just before he is generous. He must pay before he gives. Not so with his talents and his industry. Whether he has much, or little, or nothing, his first duty is the support of his family. The instinctive impulse of every just man holds this to be the first purpose of his industry. The application of the debtor's property is rightly directed to the payment of his debts. He can not transport it to another country, transfer it to his friends, or conceal it from his creditors. Any or all of these things he may do with his industry. He is at liberty to transfer his person to a foreign land. He may bury his talent in the earth, or he may give it to his wife or friend. No law, ancient or modern, of which I am aware, has ever held to the contrary. *No country, unless both barbarous and heathen, has ever authorized the sale of the person of a debtor for the satisfaction of his debts.*"

The case of Voorhees *v.* Bonesteel (16 Wall., 16), in which the case of Abbey *v.* Deyo (*supra*) was cited with approval, is very much in point. The complainant in that case sought to subject certain shares of stock stand-

ing in the wife's name to the insolvent husband's debts. A licensee of the patentee of a pavement invention had assigned to her a half interest in the license in consideration of services to be rendered by her, she paying no money. A part of the service so rendered as the consideration of the assignment to the wife was rendered by her husband as her agent.

She subsequently sold a part of her interest and devoted the proceeds to the maintenance of her family.

A company was formed and the wife received stock in lieu of her remaining interest in the license.

The husband was a trustee in the company. He acted as the agent of the wife in her business matters. Complainants urged that, as the interest in the license was conveyed in part at least in consideration of the husband's services, the stock exchanged for it was liable for his debts.

This court held that the husband was acting as the wife's agent and to promote her interests and the property was not liable for his debts, and that if the husband was supported by the profits of the wife's property (in the case at bar the husband derived more or less support from the wife's farm while acting as her agent in its management) it in no way gave him rights therein. Bulckley *v.* Wells (*infra*) was cited among other cases.

In citing the case of Owen *v.* Cawley (36 N. Y., 600) in support of its ruling, this court said:

"Laws of the kind have the effect to modify so far the antecedent disabilities incident to the conjugal relation, as to secure the wife in the *beneficial enjoyment* of the new interests she is permitted to acquire, and it is expressly held that she is at liberty to avail herself of the agency of the husband *as if they had not been united in marriage.*"

King *v.* Voos, 14 Or., 91;
Draper *v.* Stouvenel, 35 N. Y., 512;
Kelso *v.* Tabor, 52 Barb., 127.

This ruling is forcibly followed in Dayton *v.* Walsh, 47 Wis., 113, where the facts were very analogous to those in the case at bar.

The husband was insolvent. The wife had no separate estate. She purchased a farm on credit, paying no cash and giving her note for the purchase money. The husband worked the farm as the wife's agent; was paid no compensation by her, but was supported from the profits of the property. The crops and profits of the farm, being the earnings of the joint labor and management of the husband and wife, were used to pay the note. The husband's creditor sued for the crop as the product of the husband's labor and earning capacity.

The court held that the wife had the right to buy the farm on credit; that she had the right to employ her husband; that he had the right to devote his labor to her, and the proceeds were hers, and that the farm so paid for was hers.

See also Carn *v.* Roger, 55 Iowa, 650.

The endorsement of appellant's position is to be further found in the following cases:

Aldridge *v.* Muirhead, 101 U. S., 397;
Buckley *v.* Wells, 33 N. Y., 518;
Gage *v.* Duchy, 34 N. Y., 203;
Knap *v.* Smith, 27 N. Y., 278;
Kutcher *v.* Williams, 40 N. J., ch. 436;
Tersch *v.* Wyrtz, 34 N. J., ch. 124;
Taggert *v.* Fowler, 25 Neb., 152;
Bright *v.* McVeagh, 69 Ill., 624;
Brimmer *v.* Clabaugh, 78 Ill., 94;
Blood *v.* Barns, 79 Ill., 437;
Bennett *v.* Stout, 98 Ill., 47;
Taylor *v.* Boardman, 92 Ill., 566;
Cubberty *v.* Scott, 98 Ill., 38;
Castner *v.* Preston, 109 Ill., 539;

Guill *v.* Haney, 1 Brad., 490;
Reeves *v.* Webster, 71 Ill., 307;
Farrell *v.* Patterson, 43 Ill., 52;
Gilbert *v.* Glenney, 15 Iowa, 513;
Stratton *v.* Bailey, 80 Me., 345;
Parker *v.* Bates, 29 Kan., 597;
Troxell *v.* Stockberger, 105 Pa. St., 405.

From the foregoing we submit that, as the wife stands to-day, clothed with all the rights of property of any man, if she retained the stock and profits as her own, they were hers as against the husband or his creditors, unless a prior agreement or a fraudulent *intention* on her part is affirmatively, clearly, and unmistakably proved to *relinquish* her legal and beneficial rights, or her perfect beneficial rights in whatever profits the husband may have earned, in his favor.

To this effect, we submit, is the language used by this court in Voorhees *v.* Bonesteel (*supra*):

"Those laws vest in the wife the legal title to the rents, issues, and profits of her real estate as against the husband and his creditors, and it is held that the husband can not as formerly acquire title to such property in virtue of his marital rights. Consequently, it is held that where the legal title to property is in the wife, as against her husband, it can not be seized to satisfy his debts without proof that in the given case her title is merely *colorable* and fraudulent against his creditors."

The whole Record is to the effect that the profits and proceeds of the stock which stood openly in the wife's name, in fact, did not go to the husband, but were invested by Mrs. Martin in the real estate. The real estate was openly purchased by her and in her name, and the deeds made to her, and there is not an atom of evidence to show the *wife's intention* to hold the profits for the husband, or the real estate for the husband, or *her intention ever* to

part with any portion of her perfect beneficial interests in either or both.

There is no evidence that the husband had an *intention* to place his earnings, or the property bought therewith, in the wife in order that either the legal or beneficial interest therein *should be returned to him.* But the *testimony* is that, so far as she may have gotten his earnings, they were vested in her by him in good faith, and were hers, absolutely.

There is nothing to shake the necessary presumption that the wife, acting with the same rights and obligations as any man, was doing her utmost in good faith to make in her own right provision for herself and child.

Whatever may have been the *debtor's* intention, fraud must be shown on the part of the *grantee* of this real property.

Horbach *v.* Hill, 112 U. S., 144;
Jones *v.* Simpson, 116 U. S., 609;
Wilson *v.* Prewit, 103 U. S., 22.

V.

As to the source of the money which purchased the real estate sought to be made subject to the husband's debts, the testimony is positive, uncontradicted, either directly or circumstantially, and unquestioned.

The answer contains a positive denial by both defendants that Morris T. Martin had any interest of any character whatsoever in the purchase-money, and a positive declaration that all of the purchase-money was the exclusive property of Carrie E. Martin, and an equally positive declaration that Morris T. Martin has no interest of any character whatsoever, secret or otherwise, present or future, in the real property. Both defendants further deny any fraudulent intent in the purchase of the real property. (Record, pp. 13, 14, 15.)

The complainants saw fit to call the defendants as witnesses and to examine them in detail, and certainly, with both answer and complainant's own witnesses positively to the effect that Mrs. Martin's money purchased the real property and none of Mr. Martin's money went into it, unless contradicted by one witness and circumstances or by *convincing* circumstances, the facts so shown must be accepted. Equally effective must be the testimony of complainant's own witness as to the borrowing of the money by the wife and the purchase of the stock, if uncontradicted. None of the facts as sworn to by complainant's witnessses are contradicted, they being the only witnesses called.

The fact that a married woman should borrow from one willing to lend her on her own credit so small a sum as $500 or $600, has in itself not the slightest taint of improbability. The fact that a married woman should desire to and should make the small speculative investment shown in this case, is in itself not improbable. The fact that one, from motives of friendship or from a reliance on the safety of the intended investment, or from other motives, should be willing to lend a married woman so small a sum, is not in itself improbable.

We submit that the borrowing of the money, the ownership of the stock and the source of the purchase-money for the real property as shown by the testimony, are not contradicted by any *circumstance* in the case.

These facts must stand as proved.

Eyre *v.* Potter, 15 How., 42;
American File Co. *v.* Garrett, 110 U. S., 288.

In Eyre *v.* Potter the court said:

"These positive denials in the answers, being directly responsive to the charging part of the bill, the latter by every rule of equity pleading must be displaced by them, unless those denials can be overcome by evidence *aliunde*. But by the peculiar frame and structure of the bill in

this case, the complainant had imported to the answers a function beyond a mere response to the recitals or charges contained in the bill.

"The complainant has thought proper specifically to interrogate the defendants as to the origin, progress, and conditions of the transactions impugned by her, and as to the part borne in them both by the defendants and the complainant herself. By the answers to these interrogatories the complainant must, therefore, be concluded unless they can be overthrown by proofs." (P. 57.)

The complainants are bound by the testimony of their own witnesses, though those witnesses are the defendants, nor have they the right to impeach them.

Holbrook *v.* Mix, 1 E. D. Smith, 154;
1 Greenlf. Ev., sec. 442, note 1;
And see Eyre *v.* Potter (*supra*);
American File Co. *v.* Garrett (*supra*).

The burden of proof is on the complainants to show the fraud.

Conner *v.* Featherstone, 12 Wheat., 199.

The complainants had it in their power to produce other evidence to contradict the positive testimony of Mrs. Martin as to the borrowing of the money and the purchase of the stock therewith, and they failed to produce it.

Mrs. Martin testified that she gave Mr. Skakel her individual note for the money and that she thought she had the note. Whether she was swearing falsely as to borrowing the money, the note, if called for by complainants, or her failure to produce it when called upon, would have aided in determining.

It was in the power of the complainants to show the falsity of Mrs. Martin's testimony on this point by producing Mr. Skakel, from whom she swears she borrowed the money.

The corporate character of the company, if the testimony as to this is false, could have been shown by complainants to have no existence.

This is all better evidence on these material points than any which the complainants produced to negative the positive testimony of the defendants, and it must be held that if complainants had produced it, it would have corroborated defendants.

1 Greenlf. Ev., sec. 84, note 1;
Taylor on Evidence, sec. 117.

That she knew very little of the details of the company's business has no sinister import.

It was not her duty to be conversant with its affairs in any particular, in order to show perfect innocency in her connection with it. She was a stockholder and professed to be nothing more. She states that she occupied herself with her family affairs, and that she let her husband look after her stock interests. The investment was not such as to cause great anxiety to any one, and for a woman engaged in domestic affairs, particularly with her husband employed by the company and always present to care for her interests, her ignorance of details and amounts indicates nothing except that when she testified that she relied on her husband to manage these matters for her, she told the truth.

A rule relative to a defendant's answer may with propriety be applied in this cause to the defendant's testimony, since it was called forth by complainants. The rule is that even though the testimony as to the ownership of the stock and the real property were improbable, yet *if not clearly false* it would be conclusive, not being contradicted.

3 Greenlf. Ev., sec. 289;
Jackson *v.* Hart, 11 Wend., 343.

Finally, none of the subsequent events, inclusive of the purchase of the various pieces of real property, shake the broad facts that Mrs. Martin borrowed the purchase money for the stock and bought it, and that not one dollar of the husband's money is traced in the Record, either into the stock or into the real estate.

The decree below can not be supported except on the assumption that the defendants committed perjury as to the investment in the stock and in regard to the source and ownership of the purchase-money for the real property. Though this condition may not call for the weight of evidence which is demanded to prove perjury, it certainly *does* emphasize in this case the legal presumption in favor of innocence.

Fraud must not be lightly presumed; it must be clearly proved by him who charges it.

Conner *v.* Featherstone (*supra*);
Clarke *v.* White (*supra*).

The presumptions are always against fraud.

1 Greenlf., secs. 34, 35, 80;
3 Greenlf., sec. 254.

If the circumstances are reconcilable with innocence the charge of fraud fails.

Tucker *v.* Moreland, 10 Pet., 58;
Pares *v.* Pares, 33 L. J., ch., 218;
Steel *v.* Kinkle, 3 Ala., 352.

Circumstances of mere suspicion will not warrant a conclusion of fraud.

Taylor *v.* Fleet, 4 Barb., 95;
Clarke *v.* White, 12 Pet., 178.

In conclusion, if the investment in the stock had failed the wife would have been liable for the borrowed purchase-money; the husband would not have been liable.

The wife took the risks and is morally, legally, and equitably entitled to their fruits.

It is respectfully submitted that the allegations of complainants' bill—

"That the said Carrie E. Martin never paid from her own individual property, money, or possessions any consideration for the said real estate, but that the consideration thereof was wholly paid by the said Morris T. Martin with his own funds; that the said Carrie E. Martin knowingly and fraudulently holds the title of the said real estate in secret trust for the said Morris T. Martin, and in fraud of the rights of your orators and the creditors of the said Morris T. Martin"—

are not sustained, and that the decree below should be reversed.

Respectfully submitted.

D. W. VOORHEES,
REESE H. VOORHEES,
For Appellants.

148 US 663

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1892.

MORRIS T. MARTIN AND CARRIE E. MARTIN,
Appellants,
vs.
HENRY SNYDER, JR., SURVIVING PARTNER ETC.,
Appellee.

NO. 131.

APPEAL FROM CIRCUIT COURT, NORTHERN DISTRICT OF ILLINOIS.

BRIEF FOR APPELLANT,

BY

G. W. KRETZINGER.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1892.

MORRIS T. MARTIN AND CARRIE E. MARTIN,
Appellants,
vs.
HENRY SNYDER, JR., SURVIVING PARTNER ETC.,
Appellee.

NO. 131.

APPEAL FROM CIRCUIT COURT, NORTHERN DISTRICT OF ILLINOIS.

BRIEF FOR APPELLANT,

This suit was brought by appellees on creditor's bill against appellants, as husband and wife, upon judgment obtained against Morris T. Martin, one of appellants, and Henry C. Lawrence. (For brevity Morris T. Martin will be designated as Morris T., and Carrie E. Martin as Carrie E.)

Appellee alleged among other things that Morris T. purchased certain real estate and caused title thereto to be vested in Carrie E., when in fact the funds used in the purchase of such real estate were the funds of Morris T. and not the separate property of Carrie

E.; that Carrie E. never paid out of her separate estate any consideration for said real estate, and that she holds title thereto in secret trust for Morris T., her husband. Then follows a description of the property.

To this bill appellants answered jointly and severally, and therein expressly *deny* the above allegation and *aver* the purchase of the real estate in question by and for Carrie E., *and that she paid the consideration therefor by her own funds and out of her own separate estate*, and *aver* that she holds title thereto in her own name for her *own* interest, and *not* in secret trust for Morris T., and *deny* that any part of the transaction was conducted for the fraudulent purpose of delaying, hindering or defrauding the creditors of Morris T. and his former partner Lawrence.

Upon issue being joined by replication, etc., the cause was referred to the master to take proof. Upon a report of the evidence to the court the court entered a decree thereon in favor of appellee, and against appellants, therein adjudging that Carrie E. held title to said real estate in fraud of the creditors of Morris T., and that the same should be subject to the judgment of appellee.

Appellants were the *only* witnesses that were called and testified on behalf of appellee. Carrie E. testified (Rec., 24) that Morris T. was her husband; that they were married (Rec., 25) January 10, 1881. "*I pur-*
"*chased that farm* of William Emmett (one of the pieces
"described in the bill). That farm (adjoining Emmett
"farm) *I bought* of Mr. A. S. Trude, of Chicago. The
"other piece *I purchased of heirs through* Mr. Muir, the
"administrator."

She then stated that the Emmett farm contained about eighty acres, the Trude farm about 121 1/2, and the Spring farm about 140, all free of encumbrance.

"Q. Have you paid for it all?

"A. *I have paid for it all.*"

She then gives the dates of purchase and the manner of payment (Rec., 26), describes the stock on the farms, and the farm tools (Rec., 27), stating the time she had lived on the Emmett farm since its purchase; that she had made various improvements since the purchases of these different farms (Rec., 28), $2,000 for the barn, two or three thousand dollars for stock.

> "I rented the Spring farm, or rather there were relatives lived on the Spring farm for the first two or three seasons after we owned it. This season *we worked it ourselves*, and the Trude farm *I had worked since I owned it*, and *the* Emmett farm *the same*. Lived on the income in supporting the family and the place. (Rec., 29.) *I was engaged in business in Chicago.* There was a stock exchange called the 'Phenix Grain and Stock Exchange.' It was a stock concern, and *I owned half the stock.* The *other* half owned by Mr. Campbell and Mr. Skakel. The stock company was formed and *I purchased a half interest in the stock from the company. I paid the company between five and six hundred dollars.* I BORROWED THIS MONEY FROM WILLIAM SKAKEL ON MY INDIVIDUAL NOTE.
>
> Q. On your note—individual note?
>
> A. *I did.* My brother and husband managed the Phenix Grain and Stock Exchange.
>
> Q. (Rec., 30.) Did you personally attend to the business of the exchange?
>
> A. I did not. I engaged Mr. Bisbee as an attorney, and Mr. Martin *as an agent* to act for my interest in the business."

She then testified that she derived from this business the funds with which to pay for the farms; that she had been in the office of the Exchange a great *many* times *when* it was necessary to be there, and that she *also* transacted business in her lawyer's office when convenient; that she went to the rooms of the Exchange to *attend* matters that were concerning the business; that the company was changed from the Phenix to the New York,

and she subscribed for stock in the New York; that her husband represented her by proxy at the stockholders' meeting.

> "Q. (Rec., 32.) How did you get your returns from that company?
> A. *There were dividends declared* AND PAID TO ME *every two or three months.* Husband received a *salary* of $30 a week. *It was paid by the company.* (Rec., 33.) My husband was *my* agent and Mr. Bisbee was the attorney. The *funds* were placed *in my hands.* When the company was organized Mr. Martin paid *no* money into the company. *He had nothing to pay.*"

She engaged in this business at the suggestion of her husband. (Rec., 35.) She obtained all the funds for the purchase of the real estate in question from the busi- of these Exchanges.

> "Q. Did you pay Mr. Skakel the money which you say you borrowed of him?
> A. I DID. *I paid him the cash. I* TOOK *up the note.*"

She then testified that she had *no* other agent but her husband; that she consulted her legal counsel when she subscribed for the stock; *that when she sold her stock in the Exchange* (Rec., 36) *her brother and Mr. Skakel were managing the same*; that her husband is now managing the farms for her; *that the company paid him a salary;* that she did *not* pay him any certain salary.

> "Q. Did you pay him any remuneration for acting as your agent and looking after your interests while you were connected with those exchanges?
> A. *No sir.*"

She then testified that her husband was managing her farms as a voluntary act on his part; that she didn't give him any fixed salary; that he was to manage the same for her interest.

(Rec., 43.) Morris T. testified to the same effect. Defines the character of the business; that the Phenix Exchange was better known as a bucket-shop.

With the evidence of these two witnesses, the introduction of the deeds, etc., appellee rested.

Carrie E. then called to testify on her own behalf, (Rec., 46) stated that she had put into the farms between $25,000 and $30,000; that a man by the name of Kennedy is in charge of the farms for her, and has been since they left the farms and moved to the city.

Morris T. was also called and testified to the same effect.

The judgment upon which this bill proceeds, was obtained against Lawrence & Martin for a firm debt contracted long before Carrie E. entered upon the transactions, and purchased the lands here involved.

Upon this averment in the bill and these denials and averments in the answer, and upon this evidence, the court entered its decree therein, adjudging among other things, that Carrie E. held the title to the farms in fraud of the creditors of Morris T., and that the same ought in equity to be subject to the judgment described in the bill, and thereon ordered the sale of the property to satisfy the judgment, from which decree appellants appeal, and the cause is now before this court for review and correction of the errors assigned.

This undisputed evidence offered by appellee *concludes*:

1st. *That* Carrie E., the wife, borrowed the money upon her *sole* credit; that she subscribed for the stock, paid her subscription with this borrowed money, and paid the note given therefor, *out* of the proceeds of its investment, and that she purchased the premises here involved, and paid therefor *out* of the proceeds of this investment, and from the sale of her stock.

2d. That Morris T., the husband did *not* pay a single

cent towards the purchase of the lands in controversy, *nor* did he pay a *single* dollar into the transaction from beginning to end. "*He had nothing to pay*,"—nothing with which to pay *even* the family expenses. Carrie E. alone provided, and paying therefor.

3d. *That* Carrie E. employed her husband as her agent, and retained counsel from the beginning, with whom she consulted from time to time.

4th. The decree recites no finding inconsistent with these conclusions. In fact, the decree contains but one single adjudication which is a conclusion of fact, *namely*, that Carrie E. holds title to the lands in controversy in fraud of the creditors of Lawrence & Martin.

ARGUMENT.

I.

1. WAS THE PROPERTY IN QUESTION PURCHASED BY THE CREDIT OR MONEYS OF CARRIE E.? IF SO, IT BECAME HER SEPARATE PROPERTY BY VIRTUE OF AND PURSUANT TO THE STATUTES OF THIS STATE.

2. IF THIS SUIT HAD BEEN BROUGHT BY MORRIS T. AGAINST HIS WIFE FOR THE RECOVERY OF THE PROPERTY IN QUESTION, BECAUSE THE SAME WAS IN FACT NOT HER SEPARATE PROPERTY, WOULD HE BE ENTITLED TO A DECREE DIVESTING HER OF THE SAME UPON THE EVIDENCE ABOVE SHOWN?

(That the husband and wife may sue each other and test ownership of property, see section 10, chapter 68, statutes of Illinois.)

3. IF THE HUSBAND CANNOT REACH PROPERTY, TITLE TO WHICH IS VESTED IN THE WIFE, BECAUSE THE SAME WAS NOT PAID FOR BY HIM, CAN A CREDITOR OF THE HUSBAND REACH THE SAME FOR SATISFACTION OF THE HUSBAND'S DEBTS?

Appellee offered the evidence to establish the undisputed fact that Carrie E. *borrowed the money on her own note and sole credit to pay for an interest in a stock company out of which she derived in dividends on the stock so purchased by her with this borrowed money, and from the proceeds of the sale of the stock thereafter made, the funds with which to pay for the lands in controversy*, and this evidence offered by appellee further shows *without* dispute that the dividends and the proceeds of the sale of the stock were *paid directly* to Carrie E., and *not* to her husband, and that the husband was *not* the agent or employe of Carrie E. as a stockholder, but was an agent and employe of

this stock company, which company paid him a salary of $30 a week for his services.

No court has held that a stockholder as such has *any* voice in the management of the affairs and business of a corporation. If Morris T. had received the dividends and proceeds of the stock sale, and had purchased personal property and taken the immediate charge and supervision thereof, or had taken title to the real estate in question, a different question would arise in the defense of Carrie E. against the assertion of her husband's creditor here made. True, the courts of this state in giving construction to the Married Woman's Act providing for the separate estate of the wife and its protection against the creditors of the husband, have repeatedly held that if the husband as agent of the wife is allowed to receive the rents, income and issues of her property and to handle the same *as his own*, creditors may reach such issues, profits and income, but it has *never* been held that he may reach the property from which they are derived *simply* because she permits him to deal with the profits, issues or income, as his own property.

Where the title is vested in the wife no credit is given to the husband by virtue of his ownership thereof.

The defense here offered arises under the following sections of the statute of the State of Illinois, entitled, "Husband and Wife."

> "Section 5. Neither husband nor wife shall be liable for the debts or liabilities of the other, incurred before marriage, and (except as herein otherwise provided), they shall not be liable for the separate debts of each other, nor shall the wages, earnings or property of either, nor the rents or income of such property, be liable for the separate debts of the other.
>
> "Section 6. Contracts may be made and liabilities incurred by a wife, and the same enforced against her, to the

same extent and in the same manner as if she was unmarried.

"Section 7. A married woman may receive, use and possess her own earnings, and sue for the same in her own name, free from the interference of her husband or his creditors."

In *Cubberly* v. *Scott et al.*, 98 Ill, 38, Cubberly filed a creditor's bill to reach a stock of goods against the wife to pay and satisfy a judgment in favor of the creditor against the husband. The business was *carried* on by the wife in the name of Scott & Company, *her husband being with her in the store as her clerk. Prior* to that date, her husband had been engaged in the same business with two partners, but had failed.

The court found:

"There is evidence tending to show that the goods with which to commence the present business were bought with money belonging to her, and derived from sources other than her husband. * * * *Under* our laws, a married woman may own her separate estate, and may invest any funds she may have in business, and when that is done, as the evidence tends to show was done in this case, her property *cannot* be subject to the payment of her husband's debts. *The fact that her husband was a clerk in the store does not affect the right of claimant.* She could *as rightfully* employ her husband to act as her clerk and to assist in the transaction of the business, *as any other person.*"

Carrie E. *borrowed* the money and *gave her note* therefor, and with the *proceeds bought* the stock which produced the funds that paid for the land. Her husband was *not* liable on this note, *and thereafter she paid the note.*

In *Robinson* v. *Neill*, 34 W. Va., 128, under a similar statute the wife borrowed $90 from one Barnes for the horse. She gave as collateral security a note given to her by her father for $95. The note still remained unpaid at the date of the controversy. The wife owned an

ice-house, and employed her husband as her agent to store ice therein, and with the proceeds from the ice she made the cash payment on the land in controversy. The court in its opinion quotes the statute of West Virginia, touching the separate property of married women, which is identical with our own, and thereon held:

> "And this court has held in the case of *Miller* v. *Peck*, 18 W.Va., 75, that 'a married woman having personal property, which she is allowed to hold by statute as her separate property, may barter and trade with reference thereto through her husband as her agent, and will be entitled to the increase thereof, though living with her husband'; also that such a married woman may in her own name proceed, under the statute of interpleader, to assert her right to such property, and that although her husband may have given his own labor in such barter and trade, and may have used the labor of his horse therein, in the absence of the fraud of the wife, this does *not* change the character of the property, and the property is not liable for the debts of the husband, * * * In the case under consideration, however, the deed from Peter T. Barnes to the plaintiff in error was offered in evidence, and it appears upon the face of the deed, that the same contained covenants of general warranty, that time was given for the payment of the entire purchase-money in annual installments bearing interest, and a lien was reserved to secure the payment of the purchase-money; *that the plaintiff in error executed her notes to the vendor for the purchase-money*, which notes were sold by said vendor to the Farmer's Bank of Fairmont, which bank still holds said notes except the first one, which was paid with the proceeds of the sale of the ice *gathered by her husband* on said real estate, and put up in the winter of 1887 and 1888. It further appears from the facts proved, that her said husband *acted* as her agent in putting up said ice and in selling the same, and in collecting the money therefor; and, although it was proved, that she did *not* contribute *anything* towards defraying the expenses of said business, it would be only reasonable to infer, that said expenses were paid out of the money collected by him for said ice. *Not only* is it true that the evidence shows, that the land was conveyed to her by the grantor, and under our statute it must be regarded as her separate estate, *but the notes executed for the purchase-money were executed by her, and were* NOT EVEN ENDORSED *by her husband; and, so far as the purchase-money has been paid, it has been paid from the proceeds of ice gathered on said*

> *land.* She would *surely* have had a perfect right to pay said purchase money *from* timber cut on said land or from crops raised thereon; and there can be *no* good reason *why* she could not pay the purchase-money with ice gathered thereon, *although* gathered by her husband as her agent.
>
> In the case of *Hamilton* v. *Steele*, 22 W. Va., 348, this court held, that 'when a title-bond for land is executed by the vendor thereof to the husband, and the consideration is paid by the husband, as the agent of his wife, directly from the proceeds of the sale of the wife's separate estate, and from timber taken from the land, the husband having no estate or means of his own, and the circumstances showing that the purchase was made for the wife, and the deed is subsequently made by the vendor directly to the wife, such deed is not fraudulent against the creditors of the husband, and the land cannot be subjected to the payment of the debts of such creditors.'"

In the case at bar Carrie E. *negotiated the loan and secured the same by her note*, and she subscribed for the stock in her own name which she paid for by the use of this loan. *No* part of the transaction occurred in the name of her husband, and *yet* the court held that where the purchase of the real estate was negotiated for by the husband and a bond taken in his name for deed, if the consideration was paid therefor by the wife out of her separate estate, his creditors could not reach the land, and thereon the court further held:

> "In the case at bar, however, the contract was not made with the husband, but directly with the wife. The deed was made directly to her, and the husband in *no* manner became responsible for the purchase-money."

So in this case. Carrie E. *bought* and *paid* for the land here involved for which Morris T. *became* in *no*wise liable to *any* degree or in *any* amount whatever.

The court continues:

> "Certainly, then, the real estate or its products should in *no* manner be liable for the indebtedness of said husband. There can be *no* question as to the brown horse which was levied on under said execution being the separate property of the plaintiff in error, and in *no* way liable

> under said execution, *as it clearly appears that said horse was purchased with money* BORROWED *by the plaintiff in error* from Thomas H. Barnes, by depositing the note for ninety-five dollars executed to her by her father as collateral security therefor."

If appellee could not have reached the stock subscribed and paid for while said stock remained on the books of the company in the name of Carrie E., and before she sold it, then the property purchased by the proceeds thereof is equally removed from the judgment of appeal and the bill filed thereon.

In *Orr* v. *Bornstein*, (Supreme court of Pa.), 16 At. Rep., 878, held:

> "In substance, the uncontradicted evidence was that in March, 1885, Mrs. Bornstein, a married woman, *having then no separate property of her own*, (*being the exact condition of Carrie*,) determined to engage in the business of a shopkeeper, with the view of supporting herself and family. In furtherance of that purpose she presented a petition, to the court of Common Pleas of Philadelphia, and in due form obtained the benefit of the act of April 3, 1872, entitled 'An act securing to Married Women their Separate Earnings.' (In this state Carrie E. had the benefit of the act entitling married women to their separate estate *without* judicial proceeding.) She then commmunicated to her friend and relative, Mr. Silberstein, her plans, etc., and requested him to *furnish* the funds necessary to purchase a stock of goods. *After* making the necessary inquiry, and satisfying himself that her purpose was commendable, and that, under the law, her separate earnings were secured to herself, *so that they could not be taken and applied to her husband's debts*, he *loaned* her $1,500, with which she, in good faith, purchased a stock of goods and embarked in business on her own account. The loan was not made at the request, *or in any manner upon the credit of her husband, or his property, neither of which he possessed*, but *solely* on her personal credit, and on the faith of her promise and ability to repay the same out of her separate earnings, to be acquired in the prosecution of the business."

The court then finds that upon this borrowed capital the wife embarked in business, and thereafter judgment

was obtained against her husband, execution issued and levied upon her goods thus acquired. The court held (reviewing the authorities):

> "The act of 1872 undoubtedly conferred on plaintiff below the right to embark in business on her own account, and thus render herself liable for debts contracted in the prosecution of that business as if she were a *femme sole*. *If* her friend Silberstein had confidence in her integrity and business qualifications, and was willing to furnish her with money to buy a stock of goods, *relying solely* on her honesty and ability to *repay* the same out of the business, *why had she not the right to accept and use the same as her own?* It is said she had *no* separate estate, and *therefore no* basis of credit. While it may be true, as a general proposition, that without separate property a married woman has *nothing* on which to base a credit, it is *not* universally so. *Known* integrity and business qualifications, coupled with the right to engage in business on her own account, with full control of her own earnings, secured to her under the act of 1872, *ought* to be, and undoubtedly are, recognized elements of substantial *credit* for *any* married woman. That is shown by the facts impliedly established by the verdict in this case. *If* Silberstein had made an absolute gift of the $1,500 to her, *no* one could *doubt* her right to purchase a stock of goods therewith, and hold the same as against her husband's creditors. What *difference*, in principle, can it make that *instead* of *giving* her the money, he *loaned* it to her, *not upon her husband's credit*, but *solely* on the faith he had in her integrity and ability to *repay* it? CERTAINLY *the plaintiffs in error, creditors of her husband, have* NO *claim, legal or equitable, upon the goods purchased with money procured exclusively on her individual credit*, and the *credit* of the business in which she rightfully engaged. The principle that ownership of separate property is the *only* basis of credit for a married woman will *not* bear the test of reason when applied to others than married women who have *not* secured the benefits of the act of 1872, and are not *feme sole* traders, etc."

This authority giving construction and force to the Married Woman's Act of Pennsylvania is *not* in conflict with any decision of the Supreme court of this state giving construction to a like statute, and under this decision the court holds *without* the expression of a *single doubt*, *that the credit of a married woman is a property and her*

separate estate within the meaning of the statute, and upon *this credit*, as such property, may obtain funds by loan upon which to embark in business, and when thus invested, the property it represents *becomes* her separate estate which her husband's creditors *cannot* reach. *If her credit cannot be seized by her husband's creditors, its proceeds cannot.* The property it produces by faith given to it is equally her separate estate.

In *Tomlinson* v. *Matthews*, 98 Ill., 178, the court held that the wife might *loan* money to her husband and maintain her claim therefor with the same force and effect as a stranger.

> "Hence" says the court, "she may, as has been repeatedly decided by this court, make her husband her agent to collect debts due her, to receive from others the income of her estate, and to manage and control it, in her name, and, under this principle, his dealings with it will be presumptively in the character of agent. His receipt of proceeds and income, with her consent, will be in that character, and for her, and they will not, in deference to marital legal rights, thereby become his property."

But in this case it is *clearly* shown from the evidence offered by appellee that the husband, Morris T., received *no* part of the dividends or proceeds of the stock, *but that the same were paid directly to Carrie E.*

So the court further held:

> "If the husband claims such income as a gift, or other legal transfer thereof, by the wife to him, the burden is upon him to establish his claim by evidence. *Patten* v. *Patten*, 75 Ill., 451."

Thus, as above shown, if the husband, Morris T., could *not* recover this property from Carrie E., his wife, or hold it *against* her demand, *no* creditor of his would be entitled to have the same sequestered and sold under decree of the court to satisfy his claim *against* the husband for which the wife by contract was in *no* wise liable.

The statute gives to married women's acts and transactions touching her separate property, the same presumptions of validity as if she were *feme sole.*

In *Bennett* v. *Stout*, 98 Ill., 47, the court held:

> "It seems to be urged that Stout (the husband) cultivated the farm, and this is strong evidence of fraud. Where the wife may own property of this character, she, from the *necessity* of the case, *must* have it cultivated, kept in repair, the grain harvested, stored and sold, and, as it is *not* deemed proper by the community that she should do so in person, it involves the necessity of employing an agent, and it has been repeatedly held that the wife may *employ the husband for the purpose*. In fact, owing to their relations, where she regards him as competent for the place, *who could be more proper?* In fact, when living together and on the farm of the wife, the harmony of the family would seem to require that a stranger should *not* be given its entire control *excluding* the husband from all management of the farm, its stock and affairs. Mrs. Stout, in this case, swears her husband was her agent both in the purchase of the farm and in its cultivation and management. *Nor* does such an agency *convert* the products of the farm to the husband or render them liable for the debts of the husband's creditors. *Bongard* v. *Core*, 82 Ill., 19."

So in the case at bar. Carrie E. testified (being called as a witness by appellee), *that her husband* WAS HER AGENT *in whatever he did, whether touching the farm or* ANY *other part of the transactions here under review, and that evidence stands* WITHOUT *dispute.*

To the same effect see *Walker* v. *Carrington*, 74 Ill., 446. But in this case Morris T. *never* received any income or profit derived from the stock or from the farms, *except* in so far as the income from the farms was used by Carrie E. in support of the family, which was most laudable, and upon which *no* fraud can be predicated.

In *Bongard* v. *Core*, *supra*, our Supreme court in giving judicial construction to the statute in question held:

> "The products of her lands, the rents from her real estate, the increase from her stock, the interest on her money, etc., *are all as much and as absolutely hers as the capital or things from which they arise.* It would but be a *mockery* to say that a married woman *might* own and control her property, but all the increase or products *arising from it should* BELONG *to her husband.* To SO HOLD would be to render her ownership *useless*, and to *defeat* the *very* purpose of ownership of property. * * * We have seen that the husband *may* be the *agent* of the wife, and *if* he was, and had supervision of the crop and its cultivation, that could *not* affect the title of the wife. *Nor* could the fact that the husband contributed a small portion of the labor change the result, whatever might be held had he contributed all of the labor."

So from *all* these decisions the question is in every case remitted back to the original acquirement of the property claimed by the wife. *If* Carrie E. borrowed the money, becoming solely liable therefor, it *eo instanti* BECAME her *separate* property, and the stock subscribed and paid for by her with this loan BECAME equally her *separate* estate, and all proceeds thereafter derived from such stock, either in dividends or on sale, *continued* her *separate* property, and the property purchased therewith, to wit, the lands in controversy, and vested in her by direct deed of conveyance, *continued* her *separate* estate, and at *no* time from the beginning to now *became* liable for or subject to the debts of her husband.

See *Vorhees* v. *Bonesteel et al.*, 16 Wall., 16.

In *Baxter* v. *Maxwell*, (Supreme court of Pa.,) 8 At. Rep., 581, held:

> "She had a right to *employ* her husband to manage and superintend the business in which she was engaged, and his creditors *cannot* seize in execution her property produced by his superintendence and labor over and upon her separate property.
>
> *Gibbs & Sterrett Mfg. Co.* v. *Goe*, 1 Penny, 238.

Sceds v. *Kahler*, 76 Pa. St., 262.
Spering v. *Laughlin*, 113 Pa. St., 209."

Section 8 (Statute of Illinois) entitled "Husband and "Wife," provides:

> "Neither husband nor wife shall be entitled to recover ***any*** compensation for any labor performed or services rendered for the other, whether in the management of property or otherwise."

So that it is *immaterial* whether Carrie E. agreed to pay her husband for services rendered in and about *any* of these transactions or *any* part thereof, and EQUALLY *immaterial* whether she voluntarily paid or gave him any sums of money whatever, for and in consideration of such services.

The *mere* fact, that she allowed him "*pin money*" from time to time is proof of her voluntary generosity, not proof of fraud.

Morris T. had the right to refuse to act as her agent. She had an equal right to contract with him for his employment, and by such contract fix a salary for his compensation. It is *only* in the absence of such an agreement that section 8 of the statute would prohibit him from recovering against her for his compensation as such agent.

So in *Patten* v. *Patten*, 75 Ill., 446, it was held upon the state of facts before the court, that the husband was entitled to compensation for managing his wife's separate property as her agent. Therefore, her payment of compensation to him or her agreement to pay for his services cannot evidence fraud, or prove, or tend to prove that the property in question is not her separate estate.

FRAUD WILL NOT BE PRESUMED FROM AN ACT WHICH THE STATUTE CLEARLY AUTHORIZES.

The statutory authority of Carrie E. to purchase property, to deal with it, to hold and control it as her separate estate is *clear* and *undoubted*, and as shown upon principle and authority herein cited she is equally authorized under the statute to purchase property upon credit.

The *only* ground therefore upon which the decree herein can be maintained is that she exercised this statutory right for the purposes of delaying, hindering or defrauding her husband's *pre*-existing creditors.

How can the exercise of the statutory right by the wife in her purchase of property *upon* her *sole* credit *become* fraudulent as to the creditors of her husband when, by virtue of the same statute under which she exercises that right, *such* property *became* her *separate* estate and is placed by the same statute *beyond* their reach? If Carrie E. had received a single farthing from her husband to which his creditors were entitled, a different question would arise.

It is impossible to conceive of a case in which property *not* belonging to a debtor can be made subject to the claims of his creditors *unless* such property has been given over to such debtor by the owner and the debts were created and credit given therefor upon faith of the ownership by the debtor of such property. *Such is not the case at bar.* On the contrary, this was an indebtedness of Lawrence & Martin long *pre*-existing these transactions. The credit given by appellee to Lawrence & Martin was *not* based upon the property here involved.

But, assuming that the property here involved occupied a different status, one which gave an apparent right to appellee to ask this court in equity to carefully scrutinize the transactions upon the ground of the fraud charged in

the bill, *then such fraud must be clearly proven as alleged.* The universal rule without an exception is, that honesty is presumed; that dishonesty will not be implied, but must be proven.

In *Shinn* v. *Shinn*, 91 Ill., 477–486, held:

> "But something more than suspicions are required to prove an allegation of fraud. The evidence must be clear and cogent, and must leave the mind well satisfied that the allegation is true."

In *Wood* v. *Clark et al.*, 21 Brad., 470, held:

> "That fraud is not to be presumed, but must be proved by facts and circumstances in the case, and the law presumes any business transaction to be honest until the contrary is shown by proof or circumstances proven in evidence."

The rule is stated in Kerr on Frauds and Mistake, at page 382:

> "A man who alleges fraud must clearly and distinctly prove *the* fraud he alleges. * * * If the fraud is not strictly and clearly proven *as it is alleged*, relief cannot be had, although the party against whom relief is sought may not have been perfectly clear in his dealings. * * * (p. 383). If a case of actual fraud is alleged by the bill, relief cannot be had on the bill by proving *only* a case of *constructive fraud.* (Citing in the note *Brock* v. *McNaughrey*, 5 Mon., 116.) *Allegations without proof, or proof without allegations can never be the foundation of a decree.* The rules of evidence are the same in equity as at law * * * The law in no case presumes fraud. The presumption is always in favor of innocence and not of guilt. *In no doubtful matter does the court lean to the conclusion of fraud.* FRAUD IS NOT TO BE ASSUMED ON DOUBTFUL EVIDENCE. The facts constituting fraud must be *clearly* and *conclusively* established."

If B recommends and advises A to purchase a certain piece of property, and pursuant to such recommendation and advice A makes the purchase, pays for the property and takes title thereto in his own name without any money or property contribution from B, would it be necessary for

A and B to conspire together to protect this property so purchased and paid for by A from the creditors of B? I contend that the property here involved is the separate estate of Carrie E., that it originated with her credit, which in the commercial world is property; that the title thereto vested from the beginning in her; that her husband at no time had or could maintain any claim thereto of any character or nature; therefore, the statute in express words covers it up and protects it from the creditors of Morris T., and required no act of the parties to save it to the use and exclusive control of Carrie E.

The meaning of words, the relation of parties, the force of evidence, will not be strained so that fraud may be presumed. On the contrary, if two views of the evidence may reasonably be taken, one in favor of good faith and one in favor of fraud, the former will be adopted, Fraud will never be presumed, and the burden is upon the party alleging it to establish it by a clear prepondance of proof. Every act of Carrie E. in the premises touching the transactions in question is justified and protected by the statute.

Appellee is forced to rely solely for proof of fraud upon, (*a*) the marriage relation of Morris T. and Carrie E.; (*b*) that Carrie E. borrowed the money upon her credit, subscribed for the stock and paid therefor with the money so borrowed at the suggestion and upon the judgment of her husband; (*c*) that the business was known as a "bucket-shop" business, or a general speculation in grain.

The statute prohibits the creditor from seizing the property of the wife for the debts of the husband, and thus equally prohibits the indulgence and presumption of fraud arising from the marriage relation, that is, in testing

the right or title to property the husband and wife are deemed unmarried; therefore the "bucket-shop" feature injected into this case can no more taint property of the wife than that of the husband or of a stranger to both.

Suppose Carrie E. had wagered her paraphernalia *against* the sum of $500 upon a horse-race, placing her wager upon the horse suggested by her husband, bet upon his judgment and had won, and had invested that winning in the property here involved, and in the property the earnings of which produced the lands here in controversy, could it be seriously contended that notwithstanding this statute the property became the property of the husband or subject to his debts? The simple fact that she derived the property appellee seeks to reach from others than her husband, without his contribution towards the payment thereof is wholly sufficient to protect the same against his creditors.

The statute divorces the property of the wife from the property of the husband, and as to such property they are strangers.

In *Mink* v. *Crilly*, 22 App. Ct. (Ill.), 542, BAILEY, J., now chief justice of the Supreme court of Illinois, expressing the opinion of the Appellate court, said:

> "Under our statutes, in relation to the rights and liabilities of married women, the husband occupies the same relation to the wife's property as does a stranger. She may sell it or loan it to him, or constitute him her agent for its management or disposition, but a gift of it by her to him will not be presumed, in the absence of proof to that effect. *Tomlinson* v. *Matthews*, 98 Ill., 178. Had a stranger purchased the property in question of the former owner and loaned it to Ogden to be used by him in his market, no one, we think, would insist that such facts alone would make it liable to be taken for Ogden's debts. * * * As the law now stands, Mrs. Ogden occupied the same position, and the mere fact that she loaned said property to her husband to use in carrying on his trade or business, did not make it his property or subject it to his debts."

From the foregoing it conclusively follows:

1. *That* the wife's credit is property within the meaning of the statute, and therefore, constitutes her separate estate and that money borrowed upon her credit and invested in property passes into such separate estate wholly freed and removed from the debts and creditors of the husband.

2. *That* as to such separate estate the husband and wife are strangers before the law and, therefore, she may deal with reference thereto as though unmarried.

3. *That* the character of the transactions in which the wife invested her credit or money derived from the use of such credit is immaterial, *because* the fact that the wife *won* money or made money out of a clearly illegal transaction, whether at poker, horse racing or otherwise, if the capital wagered was her own, would no more place the proceeds thereof invested in lands subject to the debts of the husband than the proceeds of any gambling house in Chicago owned by A and won upon the capital and belongings of A would become subject to the indebtedness and creditors of B. Under the statute and its construction by the Supreme court Carrie E. Martin is a total stranger to every creditor of her husband and of Lawrence & Martin.

4. The fact that Morris T. suggested to his wife the large profits that might be derived from the business in which she embarked her borrowed capital, for which she became alone liable; the mere fact that Carrie E. acted from the beginning upon the judgment of her husband cannot change the situation.

The foregoing authorities conclusively establish in the wife the right under the statute to employ her husband

as her agent, and as shown, the courts advise the employment of the husband as such agent. If the wife has the right to employ the husband as her agent it is his duty to give her as such agent his best skill and his best judgment. We have yet to learn that the suggestion of the agent or the exercise of his best judgment "*breeds*" such an interest in the property of his principal acquired pursuant to such suggestion and judgment so expressed by his agent, that the creditors of the agent may reach it. *Bear* in mind that while the husband is such agent it is the agency of the stranger, so far as the property is concerned. The property relations of the husband and wife touching her separate estate are divorced by this statute, and this legislative decree of annullment makes her as principal and him as agent as though they were unmarried or belonged to the same sex.

While it is true that section 8 of the statute prohibits the husband from recovering "any compensation" for any labor performed or services rendered in the management of the property of the wife, he is not relieved from exercising his best judgment in such management, and whatever profit, income, earnings or increased value arises from or comes to such property by reason of the exercise of his best judgment, touching its management for his wife, inheres in and continues to belong to her as her separate estate. The clear purpose of the legislature by this provision was to prohibit the very contention here presented, *namely*, to prevent any creditor of the husband from attempting to reach any value contributed to the wife's separate property by the management, skill and good judgment of the husband, acting as her agent with reference thereto.

It may be contended that Carrie E. gave *no* attention

to the business from which the proceeds invested in the lands in controversy were derived. The statute which *protects* her separate estate *against* the debts of her husband and his creditors does *not* expressly or by implication require that she should personally *till* the soil, *manage* the store, *stand* as cashier of the bank in which she holds stock, in order *to secure* to her separate estate the protection the statute provides, and section 8 of the statute *clearly* provides that she may surrender the entire management of her separate estate to her husband, that she may *wholly* rely upon his judgment, and may appropriate to her separate estate his skill and best judgment exercised by him in its management, for which he is entitled to *no* compensation whatever, and for which he could prove *no* claim against her separate estate upon her death. This view is fully supported by the decisions of the Supreme court of Illinois in giving construction to this statute, in which they judicially declare that wisdom and prudence on the part of the wife require *that she should employ her husband as agent*, and thus prevent possible discord that might come to the family relations from the intrusion of a stranger into the family circle, as agent of the wife in the control and management of her separate property.

Counsel for appellee will undoubtedly rely with confident assurance upon *Lachmann et al.*, v. *Martin*, decided by the Supreme court of Illinois, October 31, 1891, in which case these appellants were appellees. The facts found by the Supreme court in that case do not appear in this record, and I submit that the decree in argument must be reviewed upon this record, and that in such review this court will not consider facts found by another court of review in a record *not* before this court.

The only evidence in the record in this case showing, or tending to show, the nature of the business in which Carrie E. invested her borrowed money is that of Morris T., (Rec., 44): "It is generally what would be called "a bucket-shop—grain and stock exchange—*where they* "*deal in grain, provisions and stocks.*" Dealing in "grain, provisions and stocks" is not necessarily gambling in the sense in which the term "gambling" is used; but assuming that Carrie E. invested the money borrowed upon her credit, in a faro bank, and invested the proceeds of the faro bank paid to her without complaint by its victims, in the lands in controversy, it is *clear* such lands would *eo instanti* become her separate estate *within* the meaning of the statute, and could *not* be taken for her husband's debts.

If she had won the money invested in these lands by gambling, her victims might have reason to complain in a suit to recover their money lost, but upon what ground a creditor of her husband could claim such spoils under these provisions of the statute it would be difficult to understand and *more* difficult to reconcile with any known rule for statutory interpretation and construction. If it were true that Carrie E. invested her borrowed money in unlawful, business out of the proceeds of which she purchased the lands in controversy, would that fact convert such separate estate *into* the lands of the husband? Would that fact entitle the creditor to take the lands from her under a judgment against the husband *because* she won the money to pay for the lands at a gaming table? *Upon* the same ground her grantors may sue to recover the lands, asking that the title vested in her be restored to them upon the ground that she paid therefor with the proceeds of an unlawful gambling transaction.

Bear in mind that her first separate estate, *namely*, her credit and the money borrowed thereon, were virtuous, free from any immoral taint, and they were seeds from which all subsequent profits proceeds grew. Her first separate estate being fixed, it must continue unchanged.

With full confidence that this court will not be controlled in its judgment by facts found by another tribunal from another record not before this court, that this court will review the errors here assigned in the light of the record here presented, and will measure and determine the rights of Carrie E. in the premises by the statute of this state which created her separate estate here involved and providing therefor adequate protection against all of her husband's debts and creditors, including appellee, this case, involving the separate estate, the entire property and all the means of the wife and mother, out of which alone she may provide for herself and family, is respectfully submitted.

G. W. KRETZINGER,
Appellants' Attorney.

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IN THE

SUPREME COURT

OF THE

UNITED STATES

APPEAL FROM

The Northern District of Illinois.

OCTOBER TERM, 1892.

MORRIS T. MARTIN, and
CARRIE E. MARTIN,
Appellants,
vs.
HENRY SNYDER, Jr.,
Surviving partner of the firm of P. W. Engs & Sons, composed of Samuel F. Engs, George Engs and Henry Snyder, Jr.,
Appellee.
} *In Chancery.*

BRIEF FOR APPELLEE.

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BRIEF FOR APPELLEE.

May it please the Court:

A decree was rendered in the court below in favor of the appellee, who, as complainant, had filed his bill in chancery against both of the appellants.

STATEMENT OF THE CASE.

The bill is in the nature of a creditor's bill, and seeks to discover assets of the defendant, Morris T. Martin, to be applied in satisfaction of a judgment against him, owned by the complainant.

There is special matter set forth in the bill, claiming that the defendant, Carrie E. Martin, who is the wife of defendant, Morris T. Martin, holds title in her name to certain valuable real estate, which in equity ought to be applied to the payment of the judgment of complainant against Morris T. Martin.

A BRIEF SYNOPSIS OF THE BILL OF COMPLAINT.

The complaint shows that the original complainants, Samuel F. Engs, George Engs, and Henry Snyder, jr., recovered a judgment in the Superior Court of Cook County, in the State of Illinois, on the 4th day of December, 1882, against defendant, Morris T. Martin, together with one Henry C. Lawrence, for the sum of $9,760.34; that execution upon said judgment against the property of the said Morris T. Martin, as well as against the property of the said Henry C. Lawrence, was thereafter, and previous to filing this bill of complaint, duly issued to the sheriff of Cook County, and was returned wholly unsatisfied, the sheriff certifying that he could find no property whereon

to levy to make any part of said judgment; that said judgment remains in full force and unsatisfied (Rec., pp. 3, 4).

After stating the usual allegations of a creditor's bill, the bill of complaint alleges that after the judgment was recovered, the defendant, Morris T. Martin, purchased several pieces of land in the County of Lake, and State of Illinois, and caused the title thereof to be conveyed to and vested in the defendant, Carrie E. Martin; that the funds used in the purchase of said lands were the funds of Morris T. Martin and not the separate and individual property of said Carrie E. Martin; that the said transaction was, as to the complainants and the creditors of Morris T. Martin, fraudulent and void; that the said Carrie E. Martin never paid from her own individual property any consideration for the said land, but that it was wholly paid by said Morris T. Martin with his own funds; that defendant, Carrie E. Martin, knowingly and fraudulently holds the title of said land in secret trust for defendant, Morris T. Martin, and in fraud of the rights of complainants and the creditors of Morris T. Martin; that the said title was placed in Carrie E. Martin, as aforesaid, by Morris T. Martin for the purpose of hindering and delaying complainants in the collection of their judgment, and that the said land ought in equity to be applied to the payment thereof.

The complainant describes the land in detail (Rec., pp. 5, 6).

The complaint prays, among other things, that Carrie E. Martin be decreed to hold said real estate in trust for the said Morris T. Martin, and for complainants, and the title of said real estate be subject to the rights and lien of complainants' judgment for the amount thereof, with interest and costs; and that complainants have execution against the said lands for the recovery of their said judgement, interest and costs of this suit; also that all transactions made by Morris T. Martin and Carrie E. Martin, in fraud of complainants, be set aside, and all property held by the said Carrie E. Martin in which Morris T. Martin has, or should have, any interest, be declared subject to execution in favor of complainants for the payment of their said judgment (Rec., p. 7, 8).

SYNOPSIS OF ANSWER.

The joint answer of the defendants denies that Morris T. Martin has "any interest in any manner or form, or any equity, secret or otherwise, in any property, real or personal, anywhere on the face of the earth" (Rec., p. 13).

The answer further denies that the real estate described in the complaint, in Lake County, was purchased by any funds in which Morris T. Martin had any interest, but alleges that the said real estate was purchased with the money of the said Carrie E. Martin, and is her separate and individual property (Rec., pp. 14, 15).

THE EVIDENCE.

There are no issues of fact to be settled by the court. There is no testimony in the cause, except the testimony of the defendants themselves, and there is no other evidence except documentary evidence.

The facts testified to by the defendants upon their examination are as follows:

The defendant, Carrie E. Martin, is the wife of Morris T. Martin. They were married at Terre Haute, Indiana, January 10, 1881.

At the time their evidence was taken, October 10, 1888, they resided in Lake County, Illinois, upon one of the three farms purchased in the name of the defendant, Carrie E. Martin, and containing in all about 343 acres of land (Rec., pp. 24, 25).

The farms are free from encumbrances. The cost of the farms (including stock and personal property upon one of them) was $17,800. They were purchased in 1885 and in 1886; and the defendants' family, consisting of the defendants, their child and the mother of the defendant, Carrie E. Martin, have resided on one of the farms since the time of the purchase (Rec., p. 27).

Defendant, Carrie E. Martin, also, in 1885, purchased a residence on Oakwood Boulevard in Hyde Park, Cook County, Illinois, paying $5,500 in cash, and assuming a mortgage of $5,000 more.

Since purchasing the farms in Lake County, defendant, Carrie E. Martin, as she testifies,

expended about $5,000 in erecting a barn upon one of the farms, and furnishing it with stock (Rec., p. 28).

Defendant, Carrie E. Martin, also testifies that she has, since purchasing the farms, been "carrying on farming on the three farms"; that the income from the farm hadn't been large: that it had been used in supporting the family, making improvements and paying expenses of the place; that it had not been self-supporting.

Defendant, Carrie E. Martin, testifies further, that prior to purchasing the farms she was engaged in business in a stock exchange (which the defendant, Morris T. Martin, says was a bucket-shop)—(Rec., p. 29) in the city of Chicago, called, the Phœnix Grain and Stock Exchange; that it was a stock concern, of which she owned half, and the other half was owned by Mr. Campbell and Mr. Skakel; that the stock was $300,000, and for her half of the stock she paid between $500 and $600; that she obtained that money by borrowing it from Mr. Skakel on her individual note; that afterwards the Exchange changed its name to the New York and Chicago Grain and Stock Exchange; that her husband and her brother, William Wolfe, managed the Exchange; that it was organized September, 1883 (Rec., p. 30), when she took her stock; that she did not personally attend the business, but engaged Mr. Bisbee as an attorney and Mr. Martin as the agent to act for her interests in the business; that the funds with which she purchased the farms

were derived from that business; that she had none of those funds when she was married in January, 1881.

Mrs. Martin further testifies that she went to the Exchange many times when necessary to attend matters concerning the business, transfer of stock, etc., and also transacted business in the lawyer's office when convenient; that she was not an officer of the company; that she signed transfers of stock when the name was changed (Rec., p. 31); that she was the largest stockholder; that the others wanted to change the name, and she had no objections; that the name was changed at the suggestion of her brother, the attorney, and her husband and others; that her brother was employed there; that she don't remember who held the offices of the company; that she never attended any meeting of stockholders, but was represented by her husband by proxy; that she could not say whether she was a director or whether her husband was a director; that she got her dividends every two or three months, and her husband was paid a salary of $30 a week by the company; that she could not recollect the size of the dividends, but they were large (Rec., p. 32).

Mrs. Martin also testifies that she sold her stock back to the company in 1886 or 1887, for less than $10,000, (Rec. p. 33), which the company paid her, her lawyer and her husband acting for her in the negotiation, and her brother acting for the company.

Mrs Martin further testifies that she kept no bank account while in the Exchange; her husband kept none, and she had no agent in the management of the Exchange but her husband; that Mr. Martin paid no money into the business.

Mrs. Martin further testifies that in January, 1881, (Rec. p. 34), when they were married, her husband was in business in the firm of Lawrence & Martin; that the firm suspended in May, 1881, and, with the exception of acting as agent in settling some of the firm matters, her husband was not in any business until the organization of the Exchange, two years and a half afterwards; that he was an able-bodied man; that she was never engaged in business (Rec. p. 35), prior to the organization of the Stock Exchange; that she had been in no business except those of the Exchanges and her farms; that she derived all the funds with which she purchased her real estate from her business in connection with the Exchanges; that she paid Skakel the note which she had given him for money borrowed; that her husband acted as her agent in those Exchanges, and she had no other agent; that she and her husband together consulted legal counsel (Rec p. 36) when she subscribed for the stock; that when she sold the stock, her brother and Mr. Skakel were managing the Exchange, and her husband was then connected with it, acting as her agent up to the time she disposed of her stock, and that he had no connection with it afterwards.

She further testifies that her husband managed the farms for her, and has been in no other business except manager of the farms since she sold her stock in the exchange; that the exchanges had paid her husband a salary; that she paid him no salary while he was connected with the exchanges; that she paid him no remuneration for acting as her agent and looking after her interests in the exchanges; that his acting as her manager on the farms was voluntary on his part; that she gave him no salary; that she carried the pocket-book, (Rec., p. 37), but gave him money when he needed it, but he had no salary; that there was no agreement between them except he was to manage the farms to the best of his ability, and the arrangement was the same when he was her manager in the exchanges; that when he was manager in the exchanges she did not furnish him with any money.

She further testifies that the Boulevard property which she owns was purchased with the funds derived from the exchanges before she bought the farms; that she invested in no other way; loaned no money; that she kept her funds made from the exchanges, drawing from time to time what she wanted, (Rec., p. 38), leaving the rest there to accumulate, until she drew out the accumulation for the purpose of purchasing the farms.

She further testifies that neither herself nor her husband had experience as farmers.

She further testifies that the money with which she repaid Mr. Skakel (Rec., p. 43) that which she

had borrowed of him, was obtained from the profits of the exchanges; that she had no other way to make money; that during the life of the exchanges she was looking after her household affairs and her family; that she was keeping house.

The defendant, Morris T. Martin, testified that he had no knowledge of farming; that he was six or seven years in the business of Lawrence & Martin; that before that he was interested in a gambling house (Rec., p. 44); and that afterwards he was engaged in a bucket shop, just prior to the organization of the Phœnix Grain and Stock Exchange; that since the organization of the exchange he had been in no business except in that business, acting as agent there for his wife, and for the con cern part of the time, and superintending farms.

He testifies that he was the manager of those bucket-shops (Rec., p. 45); and that in the last three or four years he has not saved or accumulated any funds for his particular use, any further than what they received in the business from his work as her agent.

He says that the defendant, Carrie E. Martin, appreciates what he has done for her; allows him to put on a clean shirt once a week; and gives him half a dollar with which to go to a circus with when opportunity presents.

DEFENDANTS WERE RECALLED IN THEIR OWN BEHALF.

On the 13th of February, 1889, before the Master, Carrie E. Martin testified that the entire

amount she had invested in the property in Lake County was between $25,000 and $30,000; that she did not then reside on the property, but resided at Park Manor in Cook County with her family, and was engaged in no business, but still had the farms (Rec., p. 46).

Mr. Martin at the same time testified that he had stated in his examination by the complainant in September, 1888, that the farms and stock in Lake County, described in the complaint, were worth $50,000, but he did not suppose that they could readily be sold for that amount; did not think they could be sold for more than cost (Rec., 47); that Mrs. Martin owned the place in Park Manor where they resided, and that he did not know whether they had gone to Park Manor with the intention of making it their permanent residence; that they had no plans in contemplation at present about returning at a future time to the farm.

The fact of the judgment and execution in favor of complainants and the existence of the judgment unpaid, is admitted by the defendants and the deeds were also produced in evidence showing the title of the farms, as described in the bill of complaint, to be in Carrie E. Martin, as set forth in the complaint and testified to by Mrs. Martin.

THE MATERIAL FACTS

In a more condensed form, are these:

When the defendants were married in 1881, Carrie E. Martin had no money or property. Her

husband was in business. In four months after marriage he failed. He became insolvent. For two years and a half he was out of business, except acting a portion of the time in a bucket-shop.

In September, 1883, the two defendants went together to the office of their lawyer, and consulted about how to start in business. As a result, there was organized a bucket-shop, called, the Phœnix Grain and Stock Exchange. Its nominal capital was $300,000. Carrie E. Martin took one-half of that stock in her name, and the other half was taken by one Skakel and one Campbell. Skakel and Campbell put some small amount of money into the business. Mrs. Martin had no money and she borrowed $500 or $600 of Mr. Skakel which she paid in as her portion of the working capital. This $500 or $600 represented $150,000 in stock. For that money she gave Mr. Skakel her note. She continued attending to her household duties, occasionally going to the office of her attorney or the Exchange, to sign papers when necessary or requested. Her husband, the defendant, Morris T. Martin, was manager of the Exchange, and acted as her voluntary agent, receiving no compensation from her, but paying himself, as manager of the Exchange, from the funds of the Exchange, $30 a week, salary. The business prospered. Large sums accumulated under the management by Mr. Martin of the affairs of the Exchange. From those accumulations the note given to Mr. Skakel for the $500 or $600 by Mrs. Martin, was paid. From those accumulations the expenses of the

family of defendants were paid, and finally the farms and stock in Lake County were purchased at a cost of $25,000 or $30,000. Also $5,500 were paid upon a house purchased upon Oakwood Boulevard in Cook County, and other amounts in the purchase of a residence in Park Manor. Neither Mrs. Martin nor her husband was in any business but that of the Exchanges, while this money was being made.

The complainants' judgment was recovered against the defendant, Morris T. Martin, nearly a year before the organization of the Stock Exchanges.

POINTS.

I.

MRS. MARTIN HAD NO CAPITAL. She borrowed $500 of one of those interested in the business of which her husband had control and management. That $500 was left in the concern, as her capital. Mrs. Martin knew nothing of the business, and took no part in it. By Mr. Martin's skill and management, large sums of money were made out of the business; from which profits the $500 borrowed was repaid, and all the property sought by the complainant herein to be applied in satisfaction of his judgment, was purchased.

The profits of that business cannot be the wife's separate property so as to be beyond the reach of creditors.

The Statute of Illinois which provides that a married woman may own and hold her separate and individual property in her own right, reads as follows:

"A married woman may own, in her own right, real and personal property obtained by descent, gift or purchase, and manage, sell and convey the same, to the same extent, and in the same manner, that the husband can property belonging to him."

In construing the right of a married woman to hold and own a separate estate in the State of Illinois, the decisions of the courts in this State, will, I presume, receive the highest consideration in the courts of the United States. Married women can hold separate real and personal estate only by virtue of statutory law, and every decision by the courts of Illinois, bearing upon the extent and character of the right of a married woman to hold separate estate, must necessarily have been considered and made in view of the statutes, and must therefore be directly or indirectly a construction of the statutes of the State.

I will first refer to those authorities

WHERE THE WIFE HAD NO CAPITAL.

In *Guill* v. *Hanny*, 1 Bradwell, 490, the wife, Mrs. Hanny, borrowed $500 with which she began the grocery business, her husband acting as her agent in making the purchase and in conducting and controlling the business. Six months afterwards the grocery was sold out and the proceeds invested in the business of manufacturing wagons and buggies. Mr. Hanny was a wagon-maker by trade, and conducted and controlled this business.

The creditors of Mr. Hanny levied upon the contents of the wagon-shop, and Mrs. Hanny replevied the property. The stock was then worth about $1,000.

Among other things, the court said:

This whole case has so much the appearance of an effort on the part of the principal parties interested to establish the

husband of appellee in the business where his earnings and the fruits of his labors were to be placed beyond the reach of his creditors for an unlimited time, that it should receive no favor from either court or juries.

Mrs. Hanny testified that there was no agreement as to what her husband was to receive by way of compensation for his services in attending to her business, except "that he was to be paid as the business would pay," until about the time of the levy upon the property, when it was understood that he was to have $1.50 per day for his labors. On cross-examination she was asked whether she had ever paid her husband anything on account of his services, and the court refused to permit her to answer the question. In this we think the court erred. To show the real nature of the transaction between husband and wife it was eminently proper to ascertain (if he was acting as her agent only in transacting the business) whether he had ever received any, or what, compensation for his labor. * * * * *

It is not the wife's property, but the proceeds of the husband's skill and labor that the creditors have a right to claim. In the present case there was no proof that any of the stock on hand at the time of the levy included articles that were purchased by the money of the wife in the first instance. The changes of the material originally purchased that were produced by the labor and skill of the husband, had been so interwoven with the capital of the wife as to render any identity quite impossible. * * * * * * *

It is however insisted that since the decisions referred to were made, the Revised Laws of 1874 have enlarged the rights of married women to such an extent that they can now transact business in the same manner as if they were sole and unmarried; that the husband is not liable for the debts of his wife except in certain cases, nor is she in any way responsible for his. But can it be supposed the legislature meant that either could appropriate the other's labor and skill, so as to prevent their separate creditors from obtaining the benefit of it as a means of collecting their honest debts? This would be attributing to the law-makers a motive that cannot be sup-

posed to have existed. Indeed the law itself is careful to provide that neither the wages nor the earnings of the one, shall be liable for the separate debts of the other, clearly indicating that such labor and skill should remain intact for the purpose of enabling each to discharge their own separate liabilities.

As in the case from which I have just quoted, so, Mrs. Martin paid Mr. Martin nothing for his services; so there was no agreement as to what he should receive by way of compensation for his services; and so the profits of the business were the direct result of the skill and management of Mr. Martin. His labor and skill earned the money that paid the note for $500 which was given for the capital. His skill, services and labor earned or procured also the money with which were purchased the farms and property in question.

Mrs. Martin did not obtain any of the funds with which the property in question was purchased either by "descent, gift or purchase," as provided in the statute. She did not accumulate them by her separate earnings or wages. She did not obtain them from any source other than her husband. Every dollar received was the direct fruits of her husband's skill and services.

Card v. *Robinson*, 2 Bradwell, 19, is a case remarkably like the one at bar.

In that case Mrs. Robinson testified that she borrowed money of her brother-in-law, with which she purchased materials for pump-making, and out of the proceeds of the business she repaid the loan. Her husband was bankrupt. He managed and

controlled the business, as her agent, according to his own judgment, devoting his whole time to its prosecution without any compensation for his labor The property was levied upon by a creditor of her husband. The court, among other things, said:

> We held in *Guill* v. *Hanny*, upon the authorities there cited, as well as on the correct construction of the statute, that the fruits of the husband's skill and labor were liable to be taken on execution to satisfy his debts, and we do not feel disposed to review the principles upon which that decision was founded. * * *
>
> If she had taken her husband's earnings before the purchase to buy the property with, it would require a bold man to deny the right of his creditors to seize it on execution. Is there any substantial difference between the taking his earnings before the purchase, or appropriating the wages of his labor to repay the money borrowed, with that view? The law never sanctions the doing of a thing indirectly that cannot be directly accomplished.

II.

Mrs. Martin purchased nothing but an interest in the business. It was purchased of a partner in the business. It was purchased and paid for by the skill and services of Mr. Martin, and his skill and services are not the separate and individual property of his wife.

From the profits derived from Mr. Martin's skill and management, all current expenses were paid, and over $35,000 in cash was invested in real estate and stock now on hand and claimed by Mrs. Martin.

Had Mrs. Martin possessed a separate estate, and had she purchased the stock or interest in those exchanges with her separate estate, and were she entitled under the circumstances even to retain that interest and that stock as her individual property, nevertheless, she sold it for less than $10,000 and the profits resulting from the skill and management of Mr. Martin, independent of the investment, realized all the funds with which were purchased the Lake County lands. Therefore,

III.

If Mrs. Martin had even been possessed of and invested a separate capital in business, nevertheless, it being managed by her husband, and large profits made through his skill and services, both profits and capital would be subject to seizure by his creditors.

In Illinois a husband may act as agent for his wife in a particular transaction, or agent for the control of her property or the investment of her funds. He may lease her property, collect her rents, invest her money, change the character of her investments, if authorized by her, without subjecting her property to his debts, but she cannot make him her agent to engage in trade or business to be managed by him, to which all his time and

energies must be devoted, without subjecting the property embarked in such trade and its profits to the payment of his debts.

Wortman v. *Price*, 47 Ill., 22.
Wilson v. *Loomis*, 55 Ill., 352.
Robinson v. *Brems*, 90 Ill., 351.
Patton v. *Gates*, 67 Ill., 164.

In *Wortman* v. *Price*, the wife, Mrs. Price, received from her father about $3,700, which she invested in the grain and stock business, her husband acting as her agent, in buying and shipping grain and stock with that money. The business prospered, and large amounts of money were made. The creditors of her husband levied upon about seventy hogs, which were purchased in the business. The court, *Held*, that the hogs were liable to seizure for the husband's debts. Among other things, in speaking of the statute, the court said:

> Under that law the husband can undoubtedly act as the agent of his wife for the purpose of managing her separate property, but it must be an actual and *bona fide* agency, and not an arrangement by which, under color of an agency kept concealed from the public, the husband is to enter into trade with capital furnished by the wife, carry on business in his own name precisely as he would do with his own money, and then claim, as against his creditors, that all the property bought and sold by him in the course of his business is the property of his wife. In the case before us it does not appear that there was any arrangement between the husband and wife for his compensation, although he devoted all his time and energy to the business which he claims to have been conducting as her agent. The profits of this business arose in part from the capital employed and in part from his time and skill, yet there was no arrangement as to their division.

Although the Act of 1861 authorizes the wife to hold personal property, and under that law she may employ her husband as agent to manage it, *yet it does not authorize her to receive, to the exclusion of creditors, the entire fruits of his time, skill and industry*, and it must not be so construed as to invite to fraud.

This transaction can only be regarded, so far as concerns creditors, as a loan of the wife's money to her husband, by means of which he engaged in trade. Such would have been its character if the money had come from a third person, and it must be so regarded as between the husband and wife. It has been decided in other states having a married woman's law similar in most respects to our own, that the wife cannot by virtue of this law engage in trade. *Freeman* v. *Aeser*, 5 Duer, 476; *Sherman* v. *Elder*, 24 N. Y., 383; *Wooster* v. *Northrup*, 5 Wis., 245; *Glover* v. *Alcott*, 11 Mich., 471; *Gage* v. *Dauchy*, 28 Barb., 622; *Keeney* v. *Good*, 21 Pa. St. R., 349; *Hallowell* v. *Horter*, 35 Pa. St. R., 375; whether she can do so in her own name, managing the business herself, without the aid or interference of her husband, is a question not involved in the present case, and one we do not decide. But we have no hesitation in saying that *if she advances capital to her husband with which he engages in trade, such capital and its fruits in the business will be subject to the husband's debts, even though he may claim to be acting as his wife's agent, and doing business in her name.* A different rule would lead to the grossest fraud. What is said in *Brownell* v. *Dickson*, 37 Ill., 197, in regard to the power of the husband to act as agent for his wife, simply means that he may act as her agent for a particular transaction, or agent for the control of her property or the investment of her funds. He may lease her property and collect the rents or invest her money or change the character of her investments, if authorized by her, and he may do this without subjecting her property to his debts, but we do not say nor expect to be understood as saying that she could make him her agent for the purpose of engaging in trade to be managed by him and to which all his time and energy might be devoted, and that the property embarked in such trade and

its profits would be beyond the reach of his creditors. Such is not the law.

In *Wilson* v. *Loomis*, Mrs. Rosette Roe, with money belonging to herself individually, purchased a stock of lumber, and went into partnership with one Howell in the lumber business in the name of Roe & Howell; and C. S. Roe the husband of Mrs. Roe, gave his personal attention to the business of the firm without charge and without compensation so far as the evidence shows. The firm dissolved. Howell retired and the business continued for a time in the name of C. S. Roe, agent. On the dissolution of the firm there was found due to Mrs. Roe, as her share, between $6,000 and $8,000. The property was levied upon under an execution issued on a judgment against C. S. Roe. Among other things, the court said:

> The principal question involved in this case is whether a married woman, under the Act of 1861, can engage in general trade with her husband as the managing agent, contributing his time, skill and labor to the management of the business, without making the capital embarked in the enterprise, and the proceeds thereof, liable to the husband's debts. * * *
>
> If it be conceded that the money that constituted the capital at the beginning of the trade was the separate estate of Mrs. Roe, would that fact entitle her to appropriate to herself, as separate estate, the fruits of her husband's labor through a series of years in a trade which by his skill and industry he had rendered most profitable, to the exclusion of his creditors? If she could thus appropriate the results of the husband's labor, industry and skill to herself, as separate estate for a number of years, no reason is perceived why she could not do it for an entire lifetime. In the event that the wife had sufficient separate estate with which to engage in the business of a general trade, she might be able to conduct it from year to

year until by the labor and skill of the husband they would amass a fortune, and if the proceeds of that trade belong exclusively to the wife as her separate estate, the creditors of the husband would be without remedy. It was certainly never contemplated by the legislature that any such results would follow from the Act of 1861. A man's labor or skill in any trade or branch of business is most valuable capital, and it is as unlawful for him to appropriate the results of that labor and skill to the exclusive use of the wife, as her separate property, as it would be to thus appropriate his money to the detriment of his creditors. It is a man's first duty to provide a sufficient support for his wife and family, and when that is accomplished he has no legal or moral right to divert the surplus earnings arising from his skill and labor to any other purpose than the payment of his just debts, if he owes any.

It is manifest in this case that the lumber trade in which the firm of Roe & Howell were engaged, was rendered profitable by the skill and labor of the husband, and the increase from that labor and skill bestowed in the conduct of the business, lawfully belonged to him and not the wife. If there were no creditors whose rights would be affected, of course he could work for whomsoever he pleased, and give any direction he chose to the results of that labor. It is seldom, however, that we find men working exclusively for and carrying on the business of a general trade in the name of the wife, when there are no debts the payment of which it is desirable to avoid.

The rule is that:

If the wife advances her own separate money, and places the same in the hands of her husband for the purpose of carrying on any general trade, and the husband by his labor and skill in that undertaking increases the funds, the entire capital embarked in the enterprise, together with the increase, will not constitute the separate estate of the wife, but will be liable for the debts of the husband. * * * * * * *

If it be conceded that the money originally invested in the lumber business was the separate estate of Mrs. Roe, it must

nevertheless, from the rule in *Wortman* v. *Price*, be regarded as loaned to the husband. The capital originally invested in the trade, was increased by the labor of the husband, and then reinvested, and so on until it had increased three or four fold, and the property thus acquired by the labor and energy of the husband must be held liable for his debts.

A married woman cannot engage in a general trade or business, with her husband as the managing agent, to which he must devote his whole time and energy, and yet all his earnings be beyond the reach of his creditors. This would be a perversion of the principles of the law of 1861 from the beneficent purposes designed by the legislature in its enactment.

In *Robinson* v. *Brems*, two brothers conducted the business of a restaurant, saloon and cigar store, in the names of their wives, from which business was derived a profit of from $4,000 to $5,000 a year. The families lived on the premises, the wives working in the restaurant and the kitchen and lodging rooms above. The wives claimed that the money used in the business was their separate property obtained by them from relatives; that they employed their husbands as agents to manage the business at a salary of $100 per month each. The questions before the court were upon the instructions given to the jury in the trial below.

The court among other things said:

The third, fourth, eighth and ninth instructions given for appellees are based upon the law as announced by this court in *Wilson* v. *Loomis*, 55 Ill., 352, to the effect if a married woman advances her own separate money and places the same in the hands of her husband for the purpose of carrying on any general trade, although in the wife's name, and the husband by his labor and skill in that undertaking increase the funds, the entire capital embarked in the enterprise, together

with the increase, will not constitute the separate estate of the wife, and will be liable for the debts of the husband. To the same effect are the cases of *Elijah* v. *Taylor*, 37 Ill., 247, and *Wortman* v. *Price*, 47 Ill., 22; see also *Brownell* v. *Dickson*, 37 Ill., 197. The cases of *Dean* v. *Bailey*, 50 Ill., 481, *Blood* v. *Barnes*, 79 Ill., 437, and *Primmer* v. *Clabaugh*, 78 Ill., 94, are entirely consistent with those above cited; and in *Dean* v. *Bailey* and *Blood* v. *Barnes*, the marked differences between the two classes of cases are pointed out and commented upon.

IV.

In addition to the authorities cited by the Supreme Court of Illinois in the foregoing cases, the following are some of the later decisions in other states:

Where a husband carries on a mercantile business in the name of his wife, goods purchased on credit do not become a part of her statutory estate.

Gilkey v. *Pollock*, (Ala.) 3 So. R., 99.

Where an insolvent opened a store and carried on business in his wife's name, who signed notes for goods, which notes were paid from the business, *Held*, the obvious use of the wife's name was to defraud creditors.

Blum v. *Ross* (Pa.), 10 At. R., 32.

Although a husband may act as the agent of his wife in the conduct of her business or management of her *bona fide* property, without *necessarily* subjecting it or its profits to the claims of his creditors, he cannot transact a mercantile business on

credit in his wife's name, being insolvent himself, and using his wife's name as a device to keep from his creditors the assets and profits of the business.

Hyde, et al. v. *Fry*, (U. S. C. Ct., Ind., Woods, J.), 28 Fed. R., 819.

Where a married woman with no separate estate purchases land in her own name with borrowed money secured on the land by a mortgage, her husband joining in the mortgage, *Held*, not her property as against prior creditors of the husband.

Pier v. *Siegel*, 107 Pa., St., 502.

The wife must show as against her husband's creditors that the property she purchased on credit was on the credit of her personal estate which she actually owned.

Lochman v. *Brobst*, 102 Pa. St., 481.

V.

The burden of proof is on the wife.

At common law the husband is presumed to own all the personal property in the possession of the wife while they are living together. The act of 1861 was not designed to overcome the presumption of the common law in that respect. A married woman in order to claim the benefit of the act, is bound to bring her case by the evidence within its provisions. She has the burden of proof.

Reeves v. *Webster*, 71 Ill., 307.

If the wife assert that she bought property and paid for it with her own money, received in good faith from a source other than her husband, she must prove it.

Farrell v. *Paterson*, 43 Ill., 52.

The husband is the presumed owner of the personal property, and the onus is on the wife.

Laing v. *Day*, 8 Bradwell, 63.
Duncan v. *Jackson*, 7 Bradwell, 119.
Elijah v. *Taylor*, 37 Ill., 247.
Robinson v. *Brems*, 90 Ill., 351.

But the fact that a husband lives upon his wife's farm, and cultivates it, raises no presumption of ownership in him.

Pierce v. *Hasbrouck*, 49 Ill., 23.
Dean v. *Bailey*, 50 Ill., 481.
Bongard v. *Core*, 82 Ill., 19.

Not at all inconsistent with the rule I contend for in this case, is the admitted principle that a married woman may in good faith employ her husband as her agent to manage and control her separate property, constituting her separate estate and derived from some source other than her husband; it being clearly borne in mind that she cannot appropriate the fruits of his skill and services, as her separate and individual property.

So in Illinois, where the wife hires a farm and purchases her own teams, implements and seed, with her separate estate derived from other sources than her husband, the crops belong to her, even

though the husband has done work in cultivating the land (*Garvin* v. *Goebe*, 72 Ill., 447). And where the wife actually owned the farm, and her husband managed it for her, the crops did not become his (*Bongard* v. *Core*, 82 Ill, 19; *Bennett* v. *Stout*, 98 Ill., 47); but in this case the court is particular to assert that it nevertheless still holds, as in *Wortman* v. *Price*, *supra*, that if the wife places any money in the hands of her husband to be used in trade, it is virtually a loan to him of the money, and the stock in trade would be liable for his debts (*Dean* v. *Bailey*, 50 Ill., 481).

And still the same court held in *Elijah* v. *Taylor*, 37 Ill., 249, that if the husband, by his personal labor, raised a crop upon the land of his wife, it would be liable for his debts; and in *Dean* v. *Bailey*, notwithstanding it decided that the wife could employ the husband in the management and supervision of her farm and property, the court distinctly affirmed the case of *Elijah* v. *Taylor*.

Primmer v. *Clabaugh*, 78 Ill., 94, follows *Dean* v. *Bailey*.

And so the husband may act as agent for the wife in buying a horse for her (*Dyer* v. *Keefer*, 51 Ill., 525); and he may carry on printing business to support his family in a printing office which is the separate estate of his wife, without rendering the material of the office liable for his debts (*Blood* v. *Barnes*, 79 Ill., 437); and he may purchase lands for her and in her name (*Sweeney* v. *Damron*, 47 Ill., 450; *McLaurie* v. *Partlow*, 53

Ill., 340); though if he buy lands with her funds and take the title in his own name, and sell and buy again from time to time in his own name for several years, and then sell and invest the proceeds in the name of his wife, the property will be subject to his creditors, although in the first instance the lands were purchased with the exclusive and separate estate of his wife (*Hockett* v. *Bailey*, 86 Ill., 74).

And the wife may personally own and conduct a business, and employ her husband to be with her, in her place of business, as a clerk (*Cubberly* v. *Scott*, 98 Ill., 38), but in all such cases even, the capital invested must be her separate estate, derived from some source other than her husband (*Reeves* v. *Webster*, 71 Ill., 307; *Lochman* v. *Brobst*, 102 Pa. St., 481; *Parker* v. *Bates*, 29 Kansas, 597; *Miller* v. *Peck*, 18 W. Va., 75); and she must not permit the fruits of her husband's labors to be incorporated with her own capital, else all will be subject to her husband's creditors. (See Illinois cases cited *ante*, and also *Burns* v. *Burgert*, 16 Mo. App., 22; *Daffron* v. *Crump*, 69 Ala., 77; *Shay* v. *Dickson* (N. J.), 15 At. R., 252; *Jenkins* v. *Middleton*, 13 At. R., 155).

———Since this cause was brought to this court on appeal, another creditor of Morris T. Martin filed his bill in chancery in one of the state courts of Illinois, against the appellants herein, Martin and wife, and, by the same allegations contained in the bill in this cause, sought a like relief.

Upon final hearing and decree, that case was taken on appeal to the Supreme Court of Illinois, and was there decided against Martin and wife, and in favor of the creditor who brought the action.

Abraham Lachman, et al, v. *Martin, et al.*, 28 N. E., 795.

The Martins had learned, it seems, before that cause was tried below, not to be so frank in their statements as they were in the case at bar; nevertheless, their depositions taken in this case, were, as appears by the opinion of the court, introduced in that case on the hearing. Among other things the court said:

"It is claimed that Mrs. Martin purchased with her own fund one-half of the stock of a corporation, organized under the statute of Illinois, 'to buy and sell stock, grain and provisions on commission,' and that the money with which said property was purchased was earned in the business of said corporation, while her interest in it was under the management and control of her husband, acting therein as her agent.

Out of the moneys thus alleged to have been realized as the profits of said business, $5,500 in cash were paid for the Oakwood Boulevard property, subject to a mortgage thereon of $5,000, in March, 1885; $7,700 in cash were paid for the Spring farm in the early part of October, 1885; $5,600 were paid for the Emmett farm, $4,400 in the latter part of October, 1885, and $1,200 in October, 1886; $4,500 were paid for the Trude farm in the fall of 1886; the Park Manor property, which was subject to a mortgage of $6,500, was obtained, in 1887, by trading therefor two horses upon the Emmett farm valued at $3,000 apiece; $2,000 were spent between 1886 and 1889 in the erection of a barn on the Emmett farm, and some $2,000 or $3,000 were invested in stock thereon. Mrs.

Martin and her husband moved into the Oakwood Boulevard house in April, 1885, taking with them from a house on Wood street, in Chicago, theretofore occupied and owned by him, the furniture which belonged exclusively to him. Thence in May, 1886, they moved to the Emmett farm, where they lived until November, 1889, at which latter date they moved into the Park Manor house, and are now living there.

The proof shows that out of the moneys earned in said business or venture, between $25,000 and $30,000 have been invested in real and personal property in Lake county, and that the said Lake county farms, and the stock thereon, are now worth $50,000.

Since the Act of 1874 in relation to 'husband and wife' (Rev. Stat., Chap. 68), a married woman may have her own separate property, and make contracts and do business as a *femme sole*, and may avail herself of the services and agency of her husband, in the conduct of her business or management of her property, 'without necessarily subjecting it, or the profits arising from his management, to the claims of his creditors.'

But an insolvent debtor can not use his wife's name as a mere device, to cover up and keep from his creditors the assets and profits of a business which is in fact his own. The marriage relation affords many opportunities for conducting schemes to defraud creditors, and hence transactions between husband and wife, which have the appearance of being fraudulent, will be closely scrutinized.

It is a question of fact, to be determined from all the circumstances of the case, whether or not the husband is carrying on his own business, or is merely managing his wife's business.

It must clearly appear that the wife is the *bona fide* owner of the capital invested in the business, and that the accumulations which result from the conduct of the business are the legitimate outcome of the investment of her property.

From a careful study of the evidence in this case, we are satisfied that a cunning scheme was devised for the purpose of preventing the creditors of Morris T. Martin from reaching

his property, and that the money used in the purchase of the real estate conveyed to his wife was acquired by his own shrewdness in the management of an unlawful enterprise."

* * * * * * *

"In order to give an appearance of legality to the betting and gambling, which it was proposed to carry on by means of the clock, steps were taken to form the corporation already referred to as the Phœnix Grain and Stock Exchange."

* * * * * * *

"It is not pretended that Mrs. Martin ever paid more than $500 upon subscription for 3,000 shares, that is to say, about 16 cents upon each share. It is claimed that the sum of $500, which she is said to have thus paid, was her own money. On September 7, 1883, she had no property or money; was only twenty years of age, had a young baby eight months old, and knew nothing about the business of her husband except what he and her lawyer told her. She is alleged to have borrowed the $500 in question from one Skakel on that day, and to have given him her note for the $500, secured by a pledge of her jewelry. She says that she gave the $500 at once to her and her husband's lawyer, who had suggested the organization of the corporation and organized it, and in whose office its records and books were kept.

* * * * * * *

Testifying in the United States Court on October 10, 1888, she had spoken of giving the note, but had said nothing about the pledge of the jewelry; testifying in the State court on February 5, 1889, after talking with her lawyer, her husband and her brother, and after learning the result of the suit in the United States Court, which was adverse to her husband, and after reading the briefs of the counsel therein, she says she handed Skakel her jewelry, consisting of her earrings, lace pin and two rings, to secure the note. The two rings and the earrings had been given her by her husband. Skakel gave her no receipt for the jewelry, nor any writing of any kind to show that he held it as collateral to his debt. He does not remember how long the note ran, but thinks it ran a year.

He says, however, that it was paid in May, 1884, out of the business, and the amount of the payment was charged up to her.

Some of the proof tends to show that Skakel was a stockholder in the said corporation from the beginning, and that some of the stock held in the name of Campbell and his wife belonged to him. However this may be, he was the owner of one-half of the stock, that is to say, of all the stock subscribed for by Campbell and his wife, as early as January 1, 1884. He was with Martin in the business done with the clock and by the bucket shop.

Under the state of facts thus detailed it is difficult to understand why Martin did not himself borrow the $500 in his own name, if the fact of his indebtedness to the amount of $200,000 did not suggest the name of his wife as a cover. Evidently Skakel would have loaned him the $500 without any security at all. His wife took no part in the business or in the affairs of the corporation; she never went at all to the room in the alley; she was seen only a few times in the room in the Brevoort House and then went there only for the purpose of speaking to her husband. The loan to her of $500, made under the circumstance above set forth, is the only basis for her alleged interest in the gambling enterprise herein described. Because of such loan the immense amounts of money accumulated in that enterprise and invested in property in her name, are claimed to be the outcome of her capital and her business.

* * * * * * *

The profits or accumulations of the business were not the natural increase from the investment of his wife's money, but rather the product of his own shrewdness and skill as a gambler. Out of the money thus won by his wit, the very note which his wife gave to Skakel was paid. If there was a *bona fide* loan from Skakel, the loan was made for his benefit and he discharged the debt created by it.

* * * * * * *

But, while certain phases of the testimony would lead to the conclusion that there was a partnership, if it should be assumed that a portion of the money invested in the business

belonged to Mrs. Martin, we yet think that there is no sufficient basis for any such assumption. We are of the opinion that the $500 borrowed of Skakel, which is the only money claimed to have been invested by her, must be regarded as having been borrowed by Martin for himself in his wife's name, and that the money invested in the property in question was his money."

I also respectfully submitted the

OPINION OF THE CIRCUIT COURT

delivered by the learned judge before whom this cause now at bar was tried.

It appears from the proof in the case that the defendant Carrie E. Martin holds the title to the real estate in question, and that all the real estate was paid for with money earned in the business of the Phœnix Grain and Stock Exchange, a "bucket-shop" concern, in this city, of which the defendant, Morris T. Martin, was the manager.

Mrs. Martin never invested any money in this corporation. She became a subscriber to one-half of the capital stock of the company at the time it was formed.

She borrowed, as the proof shows, from one of the stockholders the sum of $500, which was all the money that was ever put into the business, as far as the Martins were concerned. From the earnings of this business, the business which was conducted by Martin as its manager, the real estate in question was bought and paid for, the title simply being taken in the name of Mrs. Martin.

The defendant Morris T. Martin being in debt to the complainants at this time, I do not think he could secrete his earnings in the name of his wife to the delay, or in fraud of his creditors; this is property that has not been earned or acquired by any effort or instrumentality of Mrs. Martin, nor is it the outcome of any investment by her; but it has been accumulated solely by the shrewd conduct and business ability of Morris T. Martin, himself.

Respectfully submitted, on behalf of Appellee,

Allan A. Story

Solicitor.

148 US 663

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

MORRIS T. MARTIN and CARRIE E. MARTIN, Appellants,

vs.

HENRY SNYDER, JR., Surviving Partner of the Firm of P. W. ENGS & SONS, Appellee.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, the Cause being Removed thereto from the Circuit Court of Lake County of said State.

Brief for Appellants on the Question of the Legality of the Removal.

D. W. VOORHEES,
REESE H. VOORHEES,
L. B. HILLES,
For Appellants.

McGill & Wallace, Printers, 1107 E Street N. W.

Costs.

Counsel for appellees, in his brief on the question of removal, asks that appellants be adjudged to pay "all costs that were accrued in said cause since the day of said removal."

The appellees, plaintiffs below, made no opposition in the State court to the removal, made no motion in the Circuit Court to remand, took no exception to the jurisdiction of the Circuit Court, but, on the contrary, acquiesced, by such conduct, in the removal, and willingly prosecuted *their* suit under the Circuit Court's jurisdiction. (Record, appellees' brief on question of removal, p. 2.)

In the case of Hancock *v.* Holbrook, 112 U. S., 229, substantially the same facts existed as just recited, and upon them the court decided that appellants should pay one-half the costs in this court and appellees the other half, and entered the following order:

"The decree of the Circuit Court is reversed and the cause returned to that court, with instructions to remand it to the State court from which it was improperly removed, and with liberty to make such order as to costs accruing in the Circuit Court after the removal as equity and justice may require. A judgment will be entered against the appellees for one-half the costs in this court."

Appellants respectfully ask for a similar order in the case at bar.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

MORRIS T. MARTIN and CARRIE E. MARTIN, Appellants, *vs.* HENRY SNYDER, JR., Surviving Partner of the Firm of P. W. ENGS & SONS, Appellee.	No. 131.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, the Cause being Removed Thereto from the Circuit Court of Lake County of said State.

BRIEF FOR APPELLANTS ON THE QUESTION OF THE LEGALITY OF THE REMOVAL.

STATEMENT.

The parties to this suit reside in different States, the plaintiffs being citizens of New York and the defendants citizens of Illinois at the time of and since the bringing of the suit.

The bill of complaint was filed on the 27th day of October, 1887, and on the 7th day of November the defendants filed a petition praying for the removal of the

cause to the United States Circuit Court on the ground of the diverse citizenship, and the case was transferred accordingly. (Record, p. 9.)

Testimony was taken in the federal court, and the case proceeded to a decree from which the appeal was taken to this court. (Record, p. 16.)

The appeal came up for argument on the 10th day of March, 1893. During the argument the question arose from the face of the record whether the case had been properly removed from the State court to the federal court, and on the 13th day of March it was ordered by the court that briefs on that question would be received on or before the first Monday in April.

BRIEF.

The petition for removal was filed by the defendants on November 7, 1887, and, therefore, the right of removal is determined by the act of March 3, 1887 (24 Stat., 552), and not by that of March 3, 1875 (18 Stat., 470), which latter, where the jurisdiction in the federal court depends on diverse citizenship, is materially modified by the former act.

The petition recites as follows:

"Your petitioners respectfully show that the matter and amount involved in the above-entitled cause exceeds, exclusive of costs, the sum or value of two thousand dollars. Your petitioners further show that the controversy in said suit is between citizens of different States, and that the petitioners were at the time of the commencement of this suit and still are citizens of the State of Illinois, and that all the plaintiffs were then and still are citizens of the State of New York." (Record, p. 9.)

The diverse citizenship shown gave the United States Circuit Court original jurisdiction of the case concurrent with the State court, and exclusive jurisdiction of it if, by proper removal, the jurisdiction of the State court

ceased to attach. Both courts could not entertain jurisdiction of this suit at the same time; until the State court lost jurisdiction the Circuit Court's jurisdiction could not take hold of it or operate upon it to determine its merits.

The question to be determined is whether the case has ever been, in law, detached from the jurisdiction of the State court.

It is submitted that the case has been from the bringing thereof, and still is, in law, in the State court, and *therefore*, the jurisdiction of the federal court, while operative on cases of the same class as this when properly removed, never, in law, operated on this particular case, because it was never, in law, removed from the State court, and that the decree rendered by the federal court is void.

The pertinent parts of the statute here follow:

"That the Circuit Courts of the United States shall have original cognizance concurrent with the courts of the several States of all suits of a civil nature at common law or in equity where the matter in dispute exceeds, exclusive of interest and costs, the sum or value of two thousand dollars, * * * in which there shall be a controversy between citizens of different States in which the matter in dispute exceeds, exclusive of interest and costs, the sum or value aforesaid. * * * But where the jurisdiction is founded only on the fact that the action is between citizens of different States suit shall be brought only in the district of the residence of either the plaintiff or the defendant. * * *

"SEC. 2. * * * Any other suit of a civil nature at law or in equity, of which the Circuit Courts of the United States are given jurisdiction by the preceding section and which are now pending, or which may hereafter be brought in any State court, may be removed into the Circuit Court of the United States for the proper district by the defendant or defendants therein being non-residents of that State. * * *

"Whenever any cause shall be removed from any State court into any Circuit Court of the United States, and the

Circuit Court shall decide that the cause was improperly removed, and order the same to be remanded to the State court from whence it came, such remand shall be immediately carried into execution, and no appeal or writ of error from the decision of the Circuit Court so remanding such cause shall be allowed. * * *

"SEC. 3. That whenever any party entitled to remove any suit mentioned in the next preceding section, except in such cases as are provided for in the last clause of said section, may desire to remove such suit from a State court to the Circuit court of the United States, he may make and file a petition in such suit in such State court at the time, or any time before the defendant is required by the laws of the State or the rule of the State court in which such suit is brought to answer or plead to the declaration or complaint of the plaintiff, for the removal of such suit into the Circuit Court to be held in the district where such suit is pending, and shall make and file therewith a bond, with good and sufficient surety, for his or their entering in such Circuit Court, on the first day of its then next session, a copy of the record in such suit, and for paying all costs that may be awarded by the said Circuit Court if said court shall hold that such suit was wrongfully or improperly removed thereto, and also for their appearing and entering special bail in such suit if special bail was originally requisite therein.

"It shall then be the duty of the State court to accept said petition and bond and proceed no further in such suit, and the said copy being entered as aforesaid in said Circuit Court of the United States, the cause shall then proceed in the same manner as it it had been originally commenced in the said Circuit Court." (24 Stats., pp. 552–'53–'54.)

This suit having been instituted in the State court, that court could devest itself of jurisdiction of it only by virtue of power conferred and in the manner prescribed by the statute. It had no authority from any other source to relinquish jurisdiction.

To enable the State court to devest itself of jurisdiction of this particular suit it was not sufficient that the plain-

tiffs and defendants should be "citizens of different States," thus making it one to which the jurisdiction of the Circuit Court *might* attach, but it was also necessary that the cause should be *removable.*

This cause was peculiarly not removable for that there was no party to it upon whose demand the law authorized the State court to relinquish jurisdiction of it, the *defendant* being a resident of the State and the plaintiff being the *non-resident.*

The language of the statute is very explicit in specifying the only party upon whose petition the State court is authorized to act,—"the defendant or defendants therein being non-residents of that State" where the action is brought.

It is only after the demand of a defendant non-resident, in whose petition the right demanded is brought within the provisions of the statute, that the State court can relinquish its jurisdiction.

"That whenever any party *entitled* to remove any suit mentioned in the next preceding section * * * may desire to remove such suit * * * *he* may make and file a petition in such suit, * * * and shall make and file therewith a bond. * * * It shall *then* be the duty of the State court to *accept* said petition and bond, and *proceed no further in such suit.*"

The defendant non-resident is the only party *entitled* to remove under the statute. *He* only may file a petition. Only such petition as he files can the State court, under the law, accept.

The defendant non-resident having filed his petition showing that he is *entitled*, only *then* can the State court "proceed no further in such suit."

The petition and bond when filed, if they meet the statutory requirements, *per se* devest the State court of jurisdiction; not the decision of the State court upon the sufficiency of the allegations of the petition. If the

petition does not meet the statutory requirements the case does not, in law, leave the State court, notwithstanding that that court decides the petition to be sufficient, relinquishes the papers, and that the Circuit Court proceeds to pass upon the merits.

In determining when the jurisdiction of the State court ceases, under the act of 1875 (18 Stats., 470), this court, in Stone *v.* State of South Carolina (117 U. S., 430), said:

"It is undoubtedly true, as was said in Steamship Co. *v.* Tugman (106 U. S., 122, Bk. 27, L. ed. 89), that upon the filing of the petition, the suit being removable under the statute, the jurisdiction of the State court absolutely ceases, and that of the Circuit Court of the United States immediately attaches; but still, as the right of removal is statutory, before a party can avail himself of it he must show upon the record that his is a case which comes within the provisions of the statute."

And again:

"The mere filing of a petition for the removal of a suit which is not removable does not work a transfer. To accomplish this the suit must be one that may be removed, *and the petition must show a right in the petitioner to demand the removal.* This being made to appear on the record, and the necessary security having been given, the power of the State court in the case ends and that of the Circuit Court begins."

In Crehore *v.* The Ohio and Mississippi Railway Company (131 U. S., 240), the same question arose as in the case at bar, and it is submitted that the reasoning there pursued and the conclusion reached make that case conclusive of the question whether or no the case at bar has ever, in law, been out of the State court.

The case came up on error from the Circuit Court, to which it had been removed from the State court under the act of March 3, 1875. At the argument here, it was

discovered from the face of the record that the petition filed in the State court "did not sufficiently show the citizenship of the parties at the commencement of the action as well as at the time of the application for removal."

The court refused to hear further argument, and remanded the case, with instructions that it be sent back to the State court. The defendant in error then submitted a motion asking that the order remanding be so modified as to permit the case to remain in the Circuit Court for such amendment or correction of the petition as would show that the case was properly removable from the State court.

The motion was denied, the court holding that the case was still under the jurisdiction of the State court, because it did not appear upon the face of the record when the petition was filed that the petitioner was entitled to remove the cause, and, therefore, it was not removable at the time when the petition had to work the removal, namely, when filed, and subsequent amendment could not make it removable at *that* time.

Mr. Justice Harlan, in delivering the opinion of the court, said :

"Upon the filing by either party, or by any one or more of the plaintiffs or defendants, '*entitled* to remove any suit' mentioned in the first or second sections of the act of March 3, 1875 (18 Stats. at L., 470), of the petition and bond required by its third section, 'it shall *then* be the duty of the State court to accept said petition and proceed no further in such suit.'" (The italics are the court's).

The opinion then quotes from Stone *v.* State of South Carolina (*supra*) :

"To accomplish this (transfer) the suit must be one that may be removed, and the petition must show a right in the petitioner to demand the removal."

The court then says:

"It thus appears that a case is not, in law, removed from the State court upon the ground that it involves a controversy between citizens of different States, unless, *at the time the application for removal is made, the record upon its face shows it to be one that is removable.* * * * If the case be not removed, the jurisdiction of the State court remains unaffected; and, under the act of Congress, the jurisdiction of the federal court could not attach until it becomes the duty of the State court to proceed no further. *No such duty arises unless a case is made by the record that entitles the party to a removal.* * * * If a suit entered upon the docket of a Circuit Court as removed upon the ground of the diverse citizenship of the parties was never, in law, removed from the State court, no amendment of the record made in the former could affect the jurisdiction of the latter or put the case rightfully on the docket of the Circuit Court as of the date when it was there docketed; for the only mode provided in the act of Congress by which the jurisdiction of the State court of a controversy between citizens of different States can be devested is by presenting a petition and bond in *that* court showing, in connection with the record, a case that is removable. The present motion, in effect, is that such amendment of the record may be made in the Circuit Court as will show that this case *might* have been removed from the State court, not that, in law, it has ever been so removed."

See also Hurst *v.* Western and Atlantic R. R. Co., 93 U. S., 71;

Anderson *v.* Appleton, 32 Fed. Rep., 855;

Weller *v.* J. B. Pace Tobacco Co., *Ib.*, 860;

Mills *v.* Newell, 41 Fed. Rep., 529.

It would appear that the only line of reasoning which can be invoked to evade the natural restrictive effect of the change of the language in the act of 1875 to that used in the act of 1887, relative to the party who may remove, is that the inability of the *resident* to remove is but the means of securing to the non-resident the right

to elect whether he shall have the State court or the federal court pass upon his rights. If the non-resident is complainant and he elects to sue in the State court, the resident defendant can not deprive him of his election by removal. If the non-resident be defendant he may elect to remain in the State court if he be sued there, or remove to the federal court, and his election still can not be interfered with by the resident complainant.

If the provision of the statute be viewed thus, it might be contended to be merely a privilege given the non-resident, which might be waived by him, and the case thus be brought within the several decisions rendered in the Circuit Courts. (Kansas City & T. R. Co. *v.* Interstate Lumber Co., 37 Fed. Rep., 3; Fales, Admx., *v.* Chicago, M. & St. P. Ry. Co., 32 Fed. Rep., 673.)

This line of reasoning may not be pursued in the case at bar.

The *right* of removal, which must be made to appear to the State court, is statutory.

Stone *v.* State of South Carolina, *supra.*

If, in the case at bar, the non-resident should have waived his right to remain in the State court where he instituted suit, though the waiver were set out in the petition, there is still wanting the *statutory* right in the resident defendant to remove.

And finally, though such waiver *could* create a right in the resident defendant to remove, nevertheless, whatever waiver of privilege may be presumed on the part of the non-resident in the case at bar, was made too late to be operative.

A waiver of the right to stay in the State court can only be presumed from the non-resident complainant's failure to except to the exercise of jurisdiction by the Circuit Court.

This subsequent action in the case could not change the record at the time the petition was filed in the State court, by the character of which at *that* time the power of the State court to relinquish jurisdiction must be determined.

Crehore *v.* The Ohio and Mississippi Railway Co., *supra.*

It is submitted that the Circuit Court must be reversed and the case remanded to the State court.

Respectfully submitted,

D. W. Voorhees,
Reese H. Voorhees,
L. B. Hilles,
For Appellants.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

MORRIS T. MARTIN,
Appellant,
v
HENRY SNYDER, JR.,
Appellee.

131

Brief and Argument for Appellee.

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Brief and Argument for Appellee.

MAY IT PLEASE THE COURT:

The order of this court, under date of March 13, 1893, recites that there is a question arising upon the record in this cause, whether it was properly removed from the State Court of Illinois, to the United States Circuit Court.

An examination of the record and of the statutes of the United States concerning removals, in force at the time the cause was removed from the State Court of Illinois, to the United States Circuit Court, would indicate that this question has arisen in the opinion of the court, by reason of the petition for removal having been made by the defendants, who were then residents of the State of Illinois.

Previous to the statute of 1887, concerning removal of

causes from the State Courts to the Circuit Court of the United States, a cause wherein the amount involved was sufficient and the controversy was between citizens of different States, could have been removed from a State Court to the Circuit Court of the United States upon the petition of the defendants, regardless of their place of citizenship or residence.

The statute of 1887 had but recently been enacted when the petition for removal of this cause was filed. That statute was ambiguous and more or less uncertain in its terms, prior to the year 1888, when it was amended; and the appellee in this case was persuaded by the opinion of the solicitors for the appellant and by the acquiescence of the circuit judge of the United States before whom the cause was brought, that it would be useless for him to make a motion to remand the cause to the said court. In good faith, therefore, he followed the cause to the United States Circuit Court, and there prosecuted it, never for a moment doubting that the cause had been properly removed under the petition of the appellants.

Since the court has made its order of March 13th, expressing doubt as to the cause having been properly removed, thereby calling the attention of the appellee to that question for the first time, I find that most of the Circuit Courts of the United States have held that, where the removal of a cause is sought upon the ground of citizenship of the parties, the petition for removal can not be made by a resident defendant. In this case the petition was made by defendants, resident in the State of Illinois. If this court holds the opinion expressed by many of the Circuit Courts of the United States, that the petition for removal, where the ground of removal is that the controversy is between citizens

of different States, can be made by non-residents only, then it will appear, I very much regret to say, that this cause was improperly removed to the Circuit Court of the United States.

Without wishing to argue what should be the proper construction of the statute of 1887, as it was before the amendment of 1888, in relation to the question under consideration, I leave it to this court, and am able to offer no further suggestions than have already frequently been presented, as I understand, to this Honorable Bench.

Permit me, however, to add, that, if this court should find that the cause was improperly removed to the Circuit Court of the United States, I respectfully ask that all costs that have been occasioned by such removal, and all costs that have accrued in said cause since the day of said removal, be, by this Honorable Court, adjudged against the appellants herein, upon whose petition the cause was removed.

Very respectfully submitted,

Allen C. Story

For Appellee.